Supreme Court, U.S.
FILED
FEB 22 2016
OFFICE OF THE CLERK

No. 15-375

IN THE

Supreme Court of the United States

SUPAP KIRTSAENG, DBA BLUECHRISTINE99,
Petitioner,

v.

JOHN WILEY & SONS, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

E. Joshua Rosenkranz
Counsel of Record
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Lisa T. Simpson
Thomas M. Bondy
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Counsel for Respondent

[Additional Counsel Listed on Inside Cover]

PETITION FOR WRIT OF CERTIORARI FILED
SEPTEMBER 24, 2015
CERTIORARI GRANTED JANUARY 15, 2016

ADDITIONAL COUNSEL

Sam P. Israel
Eleonora Zlotnikova
SAM P. ISRAEL, P.C.
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(646) 787-9880

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General Docket
United States Court of Appeals for the Second Circuit

Court of Appeals Docket #: 14-344
Nature of Suit: 3820 PROPERTY RIGHTS-Copyright

John Wiley & Sons, Inc. v. Supap Kirtsaeng

Appeal From: U.S. District Court for the Southern District of New York, New York City

Docketed: 01/28/2014
Termed: 05/27/2015
Fee Status: Paid

01/28/2014	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Supap Kirtsaeng, FILED. [1152176] [14-344] [Entered: 02/07/2014 09:18 AM]
01/28/2014	3	DISTRICT COURT OPINION AND ORDER, dated 12/20/2013, RECEIVED.[1152183] [14-344] [Entered: 02/07/2014 09:21 AM]
05/13/2014	43	BRIEF & SPECIAL APPENDIX, on behalf of Appellant Supap Kirtsaeng, FILED. Service date 05/13/2014 by CM/ECF.

		[1223708] [14-344] [Entered: 05/13/2014 04:44 PM]
05/13/2014	44	JOINT APPENDIX, volume 1 of 4, (pp. 1-287), on behalf of Appellant Supap Kirtsaeng, FILED. Service date 05/13/2014 by CM/ECF.[1223721] [14-344] [Entered: 05/13/2014 04:49 PM]
05/13/2014	45	JOINT APPENDIX, volume 2 of 4, (pp. 288-543), on behalf of Appellant Supap Kirtsaeng, FILED. Service date 05/13/2014 by CM/ECF.[1223726] [14-344] [Entered: 05/13/2014 04:51 PM]
05/13/2014	46	JOINT APPENDIX, volume 3 of 4, (pp. 544-814), on behalf of Appellant Supap Kirtsaeng, FILED. Service date 05/13/2014 by CM/ECF.[1223731] [14-344] [Entered: 05/13/2014 04:52 PM]
05/13/2014	47	JOINT APPENDIX, volume 4 of 4, (pp. 815-1089), on behalf of Appellant Supap Kirtsaeng, FILED. Service date 05/13/2014 by CM/ECF.[1223734] [14-344] [Entered: 05/13/2014 04:53 PM]
08/12/2014	62	BRIEF, on behalf of Appellee John Wiley & Sons, Inc., FILED. Service date 08/12/2014 by

		CM/ECF [1292929] [14-344] [Entered: 08/12/2014 01:05 PM]
09/09/2014	72	REPLY BRIEF, on behalf of Appellant Supap Kirtsaeng, FILED. Service date 09/09/2014 by CM/ECF. [1315857] [14-344] [Entered: 09/09/2014 05:19 PM]
05/27/2015	96	SUMMARY ORDER AND JUDGMENT, affirming judgment of the district court, by RAK, JMW, DC, FILED.[1518070] [14-344] [Entered: 05/27/2015 09:31 AM]
06/17/2015	98	JUDGMENT MANDATE, ISSUED.[1534320] [14-344] [Entered: 06/17/2015 11:04 AM]
1/22/2016	103	U.S. SUPREME COURT NOTICE, dated 01/15/2016, U.S. Supreme Court docket # 15-375, stating the petition for writ of certiorari is granted, RECEIVED.[1689675] [14-344] [Entered: 01/22/2016 11:39 AM]

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:08-cv-07834-DCP

John Wiley & Sons, Inc. v Supap Kirtsaeng et al

Assigned to: Judge Donald C. Pogue

Referred to:

Cases in other court: US Court of Appeals, Second Circuit, 09-04896

Cause: 17:101 Copyright Infringement

Date Filed: 9/08/2008

Date Terminated: 11/17/2009

Jury Demand: Defendant

Nature of Suit: 820 Copyright

Jurisdiction: Federal Question

09/08/2008	1	COMPLAINT against Supap Kirtsaeng, John Doe. (Filing Fee $ 350.00, Receipt Number 662437) Document filed by John Wiley & Sons, Inc. (mbe) (Entered: 09/12/2008)
04/27/2009	5	ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND PREJUDGMENT ATTACHMENT AND ORDER OF ATTACHMENT

		filed by John Wiley & Sons, Inc. .... (Signed by Judge Gerard E. Lynch on 4/27/09) (cd) (Entered: 04/27/2009)
05/08/2009	19	STIPULATION PRELIMINARY INJUNCTION AND ORDER VACATING TEMPORARY ORDER OF ATTACHMENT .... (Signed by Judge Gerard E. Lynch on 5/7/2009) (tve) Modified on 6/11/2009 (tve). (Entered: 05/13/2009)
06/18/2009	21	MOTION to Adjudge Kirtsaeng and Bank of America in Contempt. Document filed by John Wiley & Sons, Inc. (Attachments: # 1 Declaration of Service) (Scileppi, Laura) (Entered: 06/18/2009)
09/15/2009	35	MEMORANDUM OPINION AND ORDER;#98032 denying 21 Motion holding Kirtsaeng and his bank account holder, Bank of America, in civil contempt of an

		April 27, 2009 temporary restraining order. (Signed by Judge Donald C. Pogue on 9/15/09) (ae) (Additional attachment(s) added on 9/16/2009: # 1 Main Document) (ae). Modified on 9/17/2009 (eef). (Entered: 09/15/2009)
10/19/2009	52	OPINION:#98172 In light of the court's analysis, described above, of Kirtsaeng's proposed defenses in this action, it is hereby: ORDERED that Kirtsaeng is prohibited as a from raising a defense pursuant to the doctrine; and it is hereby matter of law "first sale" .... (Signed by Judge Donald C. Pogue on 10/19/09) (ae) Modified on 10/23/2009 (eef). (Entered: 10/19/2009)
11/04/2009		JURY VERDICT for plaintiff in the amount of $600,000.(tro) (Entered: 11/04/2009)

11/09/2009	70	MEMORANDUM AND ORDER. Plaintiff has failed to present the court with clear and convincing evidence supporting a finding of civil contempt and an institution of a fine against Defendant. Plaintiff's motion is DENIED. (Signed by Judge Donald C. Pogue on 11/9/09) (rjm) (Entered: 11/12/2009)
11/16/2009	72	PERMANENT INJUNCTION. ORDERED, ADJUDGED AND DECREED .... (Signed by Judge Donald C. Pogue on 11/16/09) (rjm). (Entered: 11/16/2009)
11/17/2009	73	JUDGMENT #09,2217 in favor of John Wiley & Sons, Inc. against Supap Kirtsaeng in the amount of $ 600,000.00. (Signed by Judge Donald C. Pogue on 11/16/09) (Attachments: # 1 notice of right to appeal) (ml) (Entered: 11/17/2009)

11/24/2009	74	NOTICE OF APPEAL from 73 Judgment. Document filed by Supap Kirtsaeng. Filing fee $ 455.00, receipt number E 707026. (nd) (Entered: 11/24/2009)
02/02/2010	78	MOTION to Direct *Defendant Supap Kirtsaeng to Bring His Property Into New York And Appoint A Receiver*. Document filed by John Wiley & Sons, Inc.. (Attachments: # 1 Declaration of Service) (Scileppi, Laura) (Entered: 02/02/2010)
02/17/2010	84	ORDER denying 78 Motion to Direct. Pursuant to defendant's agreement, defendant is directed, upon achievement of his Ph.D, to deliver his computer and fax/printer/scanner to plaintiff. Pursuant to defendant's agreement, defendant is directed to provide plaintiff with title to the golf clubs and plaintiff's motion is otherwise denied. (Signed by

		Judge Donald C. Pogue on 2/17/10) (dle) (Entered: 02/17/2010)
10/27/2011	85	MANDATE of USCA (Certified Copy) as to 74 Notice of Appeal filed by Supap Kirtsaeng USCA Case Number 09-4896. Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED in accordance with the opinion of this Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 10/26/2011. (Attachments: # 1 Opinion) (nd) (Entered: 10/27/2011)
04/23/2013	88	TRUE COPY ORDER of USCA as to 74 Notice of Appeal filed by Supap Kirtsaeng USCA Case Number 09-4896-cv. In light of the Supreme Court's holding that the first sale doctrine does apply to such works, thus providing Kirtsaeng with a

		valid defense to copyright infringement, the District Court's judgment is REVERSED, and the cause is REMANDED for such further proceedings as may be appropriate prior to entry of final judgment. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 04/23/2013. (nd) (Entered: 04/23/2013)
05/21/2013	90	MANDATE of USCA (Certified Copy) as to 74 Notice of Appeal filed by Supap Kirtsaeng USCA Case Number 09-4896-cv .... Upon consideration thereof, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the judgment of the district court is REVERSED, and the cause is REMANDED in accordance with the opinion of this court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 05/21/2013. (Attachments: #

		1 U.S. Supreme Court Opinion, # 2 U.S. Court of Appeals Per Curiam Opinion) (nd) (Entered: 05/21/2013)
08/01/2013	93	MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Israel, Sam) (Entered: 08/01/2013)
08/01/2013	94	DECLARATION in Support re: 93 MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12) (Israel, Sam) (Entered: 08/01/2013)
08/01/2013	95	DECLARATION in Support re: 93 MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6

		Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K) (Israel, Sam) (Entered: 08/01/2013)
08/01/2013	96	MEMORANDUM OF LAW in Support re: 93 MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Attachments: # 1 Supplement Counsel's Certification of Compliance) (Israel, Sam) (Entered: 08/01/2013)
10/24/2013	107	RESPONSE in Opposition to Motion re: 93 MOTION for Attorney Fees. Document filed by John Wiley & Sons, Inc. (Oppenheim, Matthew) (Entered: 10/24/2013)
10/24/2013	108	DECLARATION of Maria Danzilo in Opposition re: 93 MOTION for Attorney Fees. Document filed by John Wiley & Sons, Inc. (Attachments: # 1 Exhibit A) (Oppenheim, Matthew) (Entered: 10/24/2013)

10/24/2013	109	DECLARATION of Kerry Mustico in Opposition re: 93 MOTION for Attorney Fees. Document filed by John Wiley & Sons, Inc. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9) (Oppenheim, Matthew) (Entered: 10/24/2013)
10/24/2013	110	DECLARATION of Susan Tiedemann Seutter in Opposition re: 93 MOTION for Attorney Fees. Document filed by John Wiley & Sons, Inc. (Oppenheim, Matthew) (Entered: 10/24/2013)
11/20/2013	115	REPLY MEMORANDUM OF LAW in Support re: 93 MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Attachments: # 1 Supplement Counsel's Certi-

		fication of Compliance) (Israel, Sam) (Entered: 11/20/2013)
11/20/2013	116	DECLARATION of E. Joshua Rosenkranz in Support re: 93 MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Israel, Sam) (Entered: 11/20/2013)
11/20/2013	117	DECLARATION of Chuck Chandler in Support re: 93 MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Israel, Sam) (Entered: 11/20/2013)
11/20/2013	118	DECLARATION of Sam P Israel in Support re: 93 MOTION for Attorney Fees. Document filed by Supap Kirtsaeng. (Attacnments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7

		Exhibit 7) (Israel, Sam) (Entered: 11/20/2013)
12/11/2013	123	REPLY MEMORANDUM OF LAW in Opposition re: 93 MOTION for Attorney Fees. Document filed by John Wiley & Sons, Inc. (Oppenheim, Matthew) (Entered: 12/11/2013)
12/11/2013	124	REPLY AFFIDAVIT of Kerry M. Mustico in Opposition re: 93 MOTION for Attorney Fees. Document filed by John Wiley & Sons, Inc. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit) (Oppenheim, Matthew) (Entered: 12/11/2013)
12/20/2013	125	OPINION AND ORDER re: 93 MOTION for Attorney Fees filed by Supap Kirtsaeng. Because Wileys claim was not objectively unreasonable, and because no other factor weighs against this important consideration in the circumstances of this

		case, grant of Kirtsaeng's fee request is not appropriate. Defendant's motion for an award of attorneys fees and reimbursement of litigation expenses is therefore denied. (Signed by Judge Donald C. Pogue on 12/20/2013) (cd) (Entered: 12/20/2013)
06/17/2015	130	MANDATE of USCA (Certified Copy) as to 126 Notice of Appeal filed by Supap Kirtsaeng USCA Case Number 14-0344-cv Ordered, Adjudged and Decreed that the order of the District Court is AFFIRMED. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 06/17/2015. (nd) (Entered: 06/17/2015)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

John Wiley & Sons, Inc.

Plaintiff,

v.

Civil Action No. 08-cv-7834-DCP

Supap Kirtsaeng *et al.*

[FILED 8/01/13]

Defendant.

NOTICE OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

PLEASE TAKE NOTICE that pursuant to 17 U.S.C. § 505 and upon the declarations of Sam P Israel and E. Joshua Rosenkranz in Support of the Defendant Supap Kirtsaeng's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, the attendant exhibits, the supporting Memorandum of Law, and all other papers and proceedings herein, defendant Supap Kirtsaeng (the "**Defendant**") will move this Court on a date and time determined by the Court as soon as counsel may be heard in the Courtroom of the Hon. Donald C. Pogue, Chief Judge for the United States Court of International Trade, 1 Federal Plaza, New York, NY 10278, for entry of an order awarding the Defendant his attorneys' fees and reimbursement of litigation expenses incurred in connection with this matter, together with accrued interest.

Dated: New York, New York
July 31, 2013

Sam P Israel, PC

By: */s /. Sam P. Israel*
Sam Israel (SPI0270)
Eleonora Zlotnikova
Esq. (ELZ 5005)
1 Liberty Plaza–Twenty Third Floor
New York, New York 10006
Tel: 212-201-5345 | Fax: 212-201-5343
info@sampisrael.com
Attorneys for Defendant Supap Kirtsaeng

Of Counsel:

E. Joshua Rosenkranz, Esq.
Orrick, Herrington & Sutcliffe LLP

United States District Court
Southern District of New York

John Wiley & Sons, Inc.

Plaintiff,

v.

Civil Action No. 08-cv-7834-DCP

Supap Kirtsaeng *et al.*

Defendant.

DECLARATION OF SAM P. ISRAEL IN SUPPORT OF DEFENDANT SUPAP KIRTSAENG'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

SAM P ISRAEL, pursuant to 28 U.S.C. § 1746, declares under penalties of perjury that the following is true and correct:

1. I am a member of the Bar of this Court in good standing and counsel to Defendant Supap Kirtsaeng ("**Kirtsaeng**" or "**Defendant**") in this matter. I submit this declaration together with the appended exhibits for the purpose of putting before the Court true and correct copies of certain documents that support the Defendant's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

2. Appended hereto as Exhibit 1 is a true and correct copy of Plaintiff John Wiley & Sons, Inc.'s

("**Wiley**" or "**Plaintiff**") September 8, 2008 [Original] Complaint, ECF No. 1.

3. Appended hereto as Exhibit 2 is a true and correct copy of Responses of Plaintiff to the Interrogatories of Defendant.

4. Appended hereto as Exhibit 3 is a true and correct copy of Responses of Plaintiff to the Document Requests of Defendant.

5. Appended hereto as Exhibit 4 is a true and correct copy of the May 8, 2009 Amended Complaint, ECF No. 18.

6. Appended hereto as Exhibit 5 is a true and correct copy of Defendant's Notice of Motion *In Limine* to Preclude Testimony of Defendant's Counsel at Contempt Hearing, ECF No. 50.

7 Appended hereto as Exhibit 6 is a true and correct copy of Plaintiff's Notice of Deposition of Sam P Israel.

8. Appended hereto as Exhibit 7 is a true and correct copy of Document Requests of Plaintiff to Defendant Supap Kirtsaeng Regarding the Contempt Hearing.

9. Appended hereto as Exhibit 8 is a true and correct copy of Contempt-Related Document Requests of Plaintiff to Defendant Supap Kirtsaeng—Second Set.

10. Appended hereto as Exhibit 9 is a true and correct copy of the Memorandum & Order denying Plaintiff's contempt motion, ECF No. 52.

11. Appended hereto as Exhibit 10 is a true and correct copy of Notice of Motion of Plaintiff for an Order Directing Kirtsaeng to Bring his Out-of-State Personal Property into New York and Appointing a Receiver, ECF No. 78.

12. Appended hereto as Exhibit 11 is a true and correct copy of Defendant's Memorandum of Law in Opposition to Motion for an Order Directing the Defendant to Bring Assets into the State, ECF No. 81.

13. Appended hereto as Exhibit 12 is a true and correct copy of contemporaneous records of fees and costs incurred by the undersigned counsel. By way of my background, I graduated from New York University School of Law in 1987 and have been practicing law for twenty three years in New York, specializing in Intellectual Property, Commercial litigation, and Securities litigation. I am the founder and managing partner of Sam P Israel, P.C. I have successfully litigated matters in New York's state, district, and appellate level courts, as well as throughout the United States. As a frequent lecturer and author of articles on intellectual property issues, dispute resolution and other matters, I have been quoted by the press regarding a number of my cases and cited by other legal scholars.

14. By reason of the foregoing, and the facts and evidence set forth in the accompanying Declaration of E. Josh Rosenkranz, dated July 31, 2013, and upon

the legal arguments advanced in the Memorandum of Law in Support of Defendant Supap Kirtsaeng's Motion for an Award of Attorney's Fees and Reimbursement of Litigation Expenses, I respectfully request that this Court should award Mr. Kirtsaeng the fees and litigation expenses incurred in the five years he undertook his defense of Wiley's claims in the amounts set forth herein and further reflected in the accompanying submissions.

Dated: New York, New York
July 31, 2013

Sam P. Israel, PC

By: */s /: Sam P. Israel*
Sam Israel (SPI0270)
Eleonora Zlotnikova
Esq. (ELZ 5005)
1 Liberty Plaza–
Twenty Third Floor
New York, New York
10006
Tel: 212-201-5345 |
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Attorneys for Defendant Supap Kirtsaeng

Sam P. Israel, P.C.
1 Liberty Plaza
23rd Floor, Suite 2330
New York, NY 10006

Invoice submitted to:
Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3
Los Angeles, CA 90034

February 1, 2009

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12431

Professional services

		Hrs/Rate	Amount
1/15/09	emails, tel. conf. w/ othrer side., emails.	0.40 325.00/hr	130.00
1/20/09	research defenses.	1.30 325.00/hr	422.50
1/21/09	prep for and appear in court for conf., appear before judge and explain legal theories for defense.	2.60 325.00/hr	845.00

		Hrs/Rate	Amount
1/22/09	tel. conf. w/ b. hart re: copyright issues in case.	0.30 325.00/hr	97.50
	For professional services rendered	4.60	$1,495.00
	Previous Balance		($4,245.00)
	Balance due		($2,750.00)

Sam P Israel, P.C.
1 Liberty Plaza
23rd Floor, Suite 2330
New York, NY 10006

Invoice submitted to:
Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3
Los Angeles, CA 90034

March 1, 2009

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12464

Professional services

		Hrs/Rate	Amount
2/5/09	tel. conf. w/ sk.	0.30 325.00/hr	97.50
2/9/09	Email correspondence regarding discovery requests. Review response from client regarding discovery; review spreadsheet of sales.	0.70 250.00/hr	175.00
2/10/09	review doc production reqs., met w/ rsn re same.	0.30 325.00/hr	97.50

		Hrs/Rate	Amount
2/12/09	emails.	0.20 325.00/hr	65.00
2/17/09	drafting discovery responses.	1.40 325.00/hr	455.00
2/19/09	draft discovery demands to plaintiff; drafting mandatory disclosures and discovery responses, interrogatory and document demands.	4.30 325.00/hr	1,397.50
2/22/09	prep doc demand, emails supap.	1.40 325.00/hr	455.00
	For professional services rendered	8.60	$2,742.50
	Previous Balance		($2,750.00)
	Balance due		($7.50)

Sam P Israel, P.C.
1 Liberty Plaza
23rd Floor, Suite 2330
New York, NY 10006

Invoice submitted to:
Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3
Los Angeles, CA 90034

April 4, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12499

Professional services

		Hrs/Rate	Amount
3/3/09	calls to supap.	0.20 325.00/hr	65.00
3/4/09	tel. conf. w/ supap.	0.20 325.00/hr	65.00
3/11/09	emails other side re: discovery, etc.	0.30 325.00/hr	97.50
3/12/09	emails.	0.20 325.00/hr	65.00
3/13/09	tel. conf. w/ sk, prep response to demands.	0.30 325.00/hr	97.50

		Hrs/Rate	Amount
3/17/09	prep production, produced docs, cones, review pl response.	0.40 325.00/hr	130.00
3/18/09	emails, review discovery responses.	0.40 325.00/hr	130.00
3/30/09	call opp. counsel.	0.10 325.00/hr	32.50
	For professional services rendered	2.10	$682.50
	Additional charges:		
3/18/09	Postage		4.95
	Total costs		4.95
	Total amount of this bill		$687.45
	Previous Balance		($7.50)
3/5/09	Payment — thank you		($7,000)
	Balance due		($6,320.05)

Sam P. Israel, P.C.
1 Liberty Plaza
23rd Floor, Suite 2330
New York, NY 10006

Invoice submitted to:
Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3
Los Angeles, CA 90034

May 2, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12529

Professional services

		Hrs/Rate	Amount
4/2/09	tel. conf. w/ opp. counsel.	0.30 325.00/hr	97.50
4/22/09	email opp counsel re: paypal.	0.30 325.00/hr	97.50
4/27/09	tel. conf. w/ adv and court re: attachment motion, review motion papers	1.40 325.00/hr	455.00
4/28/09	emails other side and tel. confs. w/ supap.	0.70 325.00/hr	227.50
4/30/09	emails opp counsel.	0.20 325.00/hr	65.00

	Hrs/Rate	Amount
For professional services rendered	2.90	$942.50
Previous Balance		($6,320.05)
Balance due		($5,377.55)

Sam P. Israel, P.C.
1 Liberty Plaza
23rd Floor, Suite 2330
New York, NY 10006

Invoice submitted to:
Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3
Los Angeles, CA 90034

June 1, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12561

Professional services

		Hrs/Rate	Amount
5/1/09	emails laura	0.30 325.00/hr	97.50
	emails laura	0.30 325.00/hr	97.50
5/2/09	start prep response to motion, emails, etc.	1.30 325.00/hr	422.50
5/13/09	drafting opp to attachment motion, emails supap.	2.40 325.00/hr	780.00
5/4/09	emails, tel. confs w/ supap and w/ court and adv. (re: scheduling,	2.70 325.00/hr	877.50

		Hrs/Rate	Amount
	etc.), research, drafting opp to motion.		
5/5/09	call court, emails, drafting opp., emails supap, etc.	5.10 325.00/hr	1,657.50
5/6/09	many calls to supap revise papers, drafting opp to motion including multiple docs, research, service, deliver to court, etc., filing, tel. conf. opp counsel, revising stipulation.	7.90 325.00/hr	2,567.50
5/7/09	emails and prepare depo notice, appear in court for argument on motion, tel. confs. w/ supap, etc.	3.20 325.00/hr	1,040.00
5/11/09	tel. confs. w/ supap re: prep for depo., etc.	0.40 325.00/hr	130.00
5/12/09	emails, defend depo., mult tel. confs. w/ supap, prep for depo.	7.20 325.00/hr	2,340.00
5/13/09	emails, review proposed protective order. emails opp. counsel.	0.30 325.00/hr	97.50

		Hrs/Rate	Amount
5/14/09	email opp counsel.	0.20 325.00/hr	65.00
5/18/09	emails; review doc pro duction, prep supap pro-duction; draft letter to opp. counsel.	0.60 325.00/hr	195.00
5/21/09	draft stip, emails.	0.60 325.00/hr	65.00
5/22/09	emails adv.	0.20 325.00/hr	65.00
5/26/09	emails re: leglaity of overseas sales, emails.	0.20 325.00/hr	65.00
	For professional ser-vices rendered	32.90	$10,692.50
	Additional charges:		
5/6/09	copies		70.00
	Total costs		70.00
	Total amount of this bill		$10,762.50
	Previous balance		($5,377.55)
	Balance due		$5,384.95

Sam P Israel, P.C.
1 Liberty Plaza
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Invoice submitted to:
Supap Kirtsaeng
3637 Mentone Avenue,
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Los Angeles, CA 90034

July 4, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12594

Professional services

		Hrs/Rate	Amount
6/4/09	emails counsel for pl. review doc prod. by plaintiff.	0.40 325.00/hr	130.00
6/18/09	review new motion.	0.30 325.00/hr	97.50
6/24/09	tel. conf. w/ bank re: subpoena, emails.	0.70 325.00/hr	227.50
	For professional services rendered	1.40	$455.00
	Previous Balance		$5,384.95

		Hrs/Rate	Amount
6/14/09	Credit		($10,000)
	Balance due		($4,160.05)

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Invoice submitted to:
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Los Angeles, CA 90034

August 1, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12625

Professional services

		Hrs/Rate	Amount
7/5/09	prep opp to motion for con-tempt, Israel decl and supap decl.	3.20 325.00/hr	1,040.00
7/6/09	revisions to decl; tel. confs. w/ supap, file opp papers.	2.60 325.00/hr	845.00
7/10/09	emails opp counsel; review reply submission on con-tempt motion, tel. conf. w/ opp. counsel.	0.80 325.00/hr	260.00
7/14/09	drafting joint pre-trial memo.	1.80 325.00/hr	585.00

		Hrs/Rate	Amount
7/16/09	drafting/revising pre-trial or-der; tel. conf. w/ opp. counsel.	0.40 325.00/hr	130.00
7/17/09	drafting /revising pre-trial memo.	4.80 325.00/hr	1,560.00
7/18/09	prepare pre trial order.	3.10 325.00/hr	1,007.50
7/20/09	2 tel. confs. w/ ls, revise pto, etc.	2.30 325.00/hr	747.50
7/23/09	emails review cones w/ other side.	0.30 325.00/hr	97.50
		19.30	$6,272.50
	Previous Balance		($4,160.05)
	Balance due		$2,112.45

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Invoice submitted to:
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September 1, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12654

Professional services

		Hrs/Rate	Amount
8/5/09	draft letter to judge pogue.	0.60 325.00/hr	195.00
8/12/09	tel. conf. w/ opp. counsel.	0.20 325.00/hr	65.00
8/22/09	emails re: misc.	0.30 325.00/hr	97.50
8/23/09	emails.	0.20 325.00/hr	65.00
8/26/09	tel. conf. w/ ct; reviewing orders, etc.	0.30 325.00/hr	97.50

	Hrs/Rate	Amount
For professional serivces rendered	1.60	$520.00
Previous balance		$2,112.45
Balance due		$2,632.45

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October 3, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12703

Professional services

		Hrs/Rate	Amount
9/1/09	Tel. Conf. W/ court and opp coun-sel, emails, prep for call.	0.80 325.00/hr	260.00
9/3/09	Tel. Conf. And emails.	0.50 325.00/hr	162.50
9/8/09	review corres from opp. Counsel, court order, etc., discovery de-mands.	0.60 325.00/hr	195.00
9/9/09	emails supap, draft dis-covery re-sponse.	1.60 325.00/hr	520.00

		Hrs/Rate	Amount
9/12/09	review emails from supap, doc demand responses, revise written responses and assemble docs for prod.	2.60 325.00/hr	845.00
9/14/09	Tel. Conf. W/ bill donnegan, research for brief on first sale doctrine, research other related issues, drafting.	2.50 325.00/hr	812.50
9/15/09	draft letter to judge pogue, assemble exhibits for submission to court, draft memo, mult Tel. Confs. W/ opp. counsel. further revisions to disc responses.	3.20 325.00/hr	1,040.00
9/16/09	emails other side, drafting memo; doing depo notice, etc.	4.90 325.00/hr	1,592.50
9/17/09	revise memo further, emails.	2.80 325.00/hr	910.00
9/18/09	emails supap; emails opp., draft depo notices to counsel, debate	1.40 325.00/hr	455.00

		Hrs/Rate	Amount
	w/other side re: discovery issues re: contempt matter.		
9/21/09	draft letter to judge, multi., emails, review further corres from ct. and emails.	2.60 325.00/hr	845.00
9/22/09	call ct, emails, review file.	0.90 325.00/hr	292.50
9/23/09	Prep for and Participate in conf w/ct re: contempt discovery issues, tel. conf. w/supap, emails.	1.60 325.00/hr	520.00
9/24/09	mult. emails opp counsel and drafting revised pre-trial order with additional legal arguments and facts., etc.	2.10 325.00/hr	682.50
9/25/09	preparing revised pto; review fax from supap; research emails, opp. counsel.	3.10 325.00/hr	1,007.50
9/26/09	drafting pto; additional copyright related research, etc.	2.60 325.00/hr	845.00

		Hrs/Rate	Amount
9/27/09	research, drafting PTO.	1.60 325.00/hr	520.00
9/28/09	revise pto; emails opp. counsel, etc.	2.20 325.00/hr	715.00
9/29/09	emails opp. counsel, revise pto; mult tel. confs. w/ b. donnegan and emails.	2.80 325.00/hr	910.00
9/30/09	review corres to court; respond, draft letter, tel. conf. w/ ct., emails; tel. conf. w/ supap.	2.70 325.00/hr	877.50
	For professional serivces rendered	43.10	$14,007.50
	Previous balance		$2,647.45
	Accounts receivable transactions		
9/17/09	Payment – thank you		($8,647.45)
	Total payments and adjustments		($8,647.45)
	Balance due		$8,007.50

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Invoice submitted to:
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November 01, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12734

Professional services

		Hrs/Rate	Amount
10/1/09	prep w/ supap for depo; defend depo; tel. confs. w/ sk.	4.20 325.00/hr	1,365.00
10/2/09	tel. conf. w/ donneegon; call court, prep motion affirmation to be relieved as counsel and memo of law.	3.60 325.00/hr	1,170.00
10/3/09	drafting motion to be relieved and supporting papers.	1.50 325.00/hr	487.50

		Hrs/Rate	Amount
10/4/09	further drafting of motion to be relieved.	1.30 325.00/hr	422.50
10/6/09	prep jury instructions; tel. conf. w/ opp counsel; review ct. orders; tel. conf. w/ supap.	3.60 325.00/hr	1,170.00
10/7/09	prep voire dire questions, revise jury instructions, file., etc.	2.60 325.00/hr	845.00
10/10/09	corres w/ opp counsel re: sub compel.	0.20 325.00/hr	65.00
10/11/09	review corres from opp counsel and witness designations.	0.20 325.00/hr	65.00
10/14/09	prep joint evid. list for contempt hearing; tel. confs. w/ laura; prep motion in limine to preclude counsel's testimony.	5.20 325.00/hr	1,690.00
10/15/09	research issues re: contempt motion; review new motion to compel by wiley.	1.50 325.00/hr	487.50
10/16/09	emails court, review order, refile motion.	0.30 325.00/hr	97.50

		Hrs/Rate	Amount
10/19/09	review judge's decision, emails supap, analysis, review court's revised jury instructions, analyze for comment at jury charging conference.,verdict sheet.	1.40 325.00/hr	455.00
10/20/09	emails, review new filings, etc.	1.50 325.00/hr	487.50
10/21/09	prep for and appear in court for charging conference; tel. conf. w/ supap, research service issue, research cases to exclude paypal docs.	6.40 325.00/hr	2,080.00
10/22/09	drafting motion in limine to preclude paypal records. research mult emails opp counsel re: follow-up with court on open is-sues.	6.20 325.00/hr	2,015.00
10/23/09	finalize 2d motion in limine, draft letter to judge, file, emails supap.	2.80 325.00/hr	910.00

		Hrs/Rate	Amount
10/24/09	review appeal papers from lawyer in related case; emails.	1.20 325.00/hr	390.00
10/26/09	review opp to 2d motion in limine; review revised pre-trial or-der, verdict sheet, jury instructions, etc.	1.20 325.00/hr	390.00
10/27/09	prep fro 10/28 hearing, met w/supap re: same, review court orders.	2.50 325.00/hr	812.50
10/28/09	appear in court on contempt hearing examine supap on stand, argue, negotiate terms for pretrial order, argue merits of motion in limine to keep evidence out, review tr., etc.	8.20 325.00/hr	2,665.00
10/29/09	emails, preparing exhibits for trial, etc.	2.30 325.00/hr	747.50
10/30/09	mult tel. confs. w/ supap; draft letter to court.	1.20 325.00/hr	390.00
	For professional serivces rendered	59.10	$19,207.50

		Hrs/Rate	Amount
	Additional Charges		
10/23/09	messenger		15.00
10/28/09	Transcript of contempt hearing		229.50
10/30/09	Copies exhs.		62.00
	Messengers-dunnegan and pogue		30.00

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December 01, 2009
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12761

Professional services

		Hrs/Rate	Amount
11/1/09	prep for trial and prep w/ supap.	4.20 325.00/hr	1,365.00
11/2/09	prep for trial; tel. conf. w/ court re: remaining is-sues.	6.20 325.00/hr	2,015.00
11/3/09	prep for/draft 3rd motion in limine, argue motion, adduce tes-timony, open-ing statement, try case. closing argument.	10.30 325.00/hr	3,347.50
11/4/09	appear in court w/ supap for verdict; met w/ sk,	3.10 325.00/hr	1,007.50

		Hrs/Rate	Amount
	followup, re-search prospects of motion jnov.		
11/6/09	emails opp counsel, comments on proposed stipulated injunction.	0.30 325.00/hr	97.50
11/9/09	emails/ tel. conf. w/ john mitchell, review contempt order, etc.	0.50 325.00/hr	162.50
11/12/09	dealing w/ opp. counsel re: injunction order.	0.30 325.00/hr	97.50
11/23/09	prep. notice of appeal and support papers.	1.60 325.00/hr	240.00
	For professional services rendered	26.50	$8,332.50
	Additional charges:		
11/23/09	appellate filing fee		455.00
	united lawyers filing service		20.00
11/30/09	correction		9,000.00
	Total additional charges		$9,475.00
	Total amount of this bill		$17,807.50

		Hrs/Rate	Amount
	Previous balance		$12,584.47
	Accounts receivable transactions		
11/6/09	Credit		($9,000)
11/30/09	Credit		($9,000)
	Total payments and adjustments		($18,000)
	Balance due		$12,391.97

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Invoice submitted to:
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3637 Mentone Avenue,
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Los Angeles, CA 90034

January 03, 2010

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12787

Professional services

		Hrs/Rate	Amount
12/2/09	start prep forms for appeal—C&D, appendices, etc.	0.70 150.00/hr	105.00
12/3/09	drafting schedules for appeal, assembling, drafting issues for appeal, other matters, etc.	4.30 150.00/hr	645.00
12/4/09	file papers with 2d circuit for appeal.	0.90 150.00/hr	135.00
12/17/09	tel conf. opp counsel re: post trial discovery.	0.20 325.00/hr	65.00

		Hrs/Rate	Amount
12/23/09	emails court re: post judg discovery.	0.20 325.00/hr	65.00
12/23/09	emails court re: post judg discovery.	0.20 325.00/hr	65.00
12/30/09	review exemption notices, etc. re: restrining notice on bank, emails from plaintiff.	0.30 325.00/hr	97.50
	For professional services rendered	6.60	$1,120.50
	Additional Charges:		
12/3/09	tr for appeal		255.00
	copies postage		35.00
	Total additional charges		$290.00
	Total amount of this bill		$1,402.50
	Previous balance		$12,391.97
	Accounts receivable transactions		
12/12/09	Payment — thank you-wire		($8,980.00)
12/28/09	Credit		Amount
	Total payments and adjustments		($8,975.00)

	Hrs/Rate	Amount
		($17,955.00)
Credit balance		($4,160.53)

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Invoice submitted to:
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February 01, 2010

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12815

Professional services

		Hrs/Rate	Amount
1/4/10	emails supap; tel. conf. w/ court re: post judgment disc. issues.	0.40 325.00/hr	130.00
1/5/10	tel. conf. w/ counsel press.	0.30 150.00/hr	45.00
1/6/10	call supap; emails opp counsel re: upcoming depo sched., etc.	0.30 325.00/hr	97.50
1/7/10	appear in court for pre-argument conf.; tel.	1.30 150.00/hr	195.00

		Hrs/Rate	Amount
	conf. w/ supap re: appeal.		
1/8/10	emails. re: post judg. discovery. review sub to usc	0.20 325.00/hr	65.00
1/10/10	compiling record for appeal.	2.30 150.00/hr	345.00
	non-appeal work: emails re: new subpoeana.	0.30 325.00/hr	97.50
1/11/10	preparing exhibits for joint appendix on appeal; email opp counsel, tel. conf. w/ opp. counsel.	1.80 150.00/hr	270.00
1/13/10	appeal: further assembling docs for appendix and work w/ counsel press	0.40 150.00.hr	60.00
	non-appeal work; emails.	0.20 325.00/hr	65.00
1/14/10	prep for supap depo and defend same—non-appeal work.	4.10 325.00/hr	1,332.50

		Hrs/Rate	Amount
1/15/10	tel. conf. w/ sk.	0.20 325.00/hr	65.00
1/16/10	appeal work: drafting app. brief.	3.20 150.00/hr	480.00
1/17/10	appeal work. drafting app brief; research re: copyright issues.	6.80 150.00/hr	1,020.00
1/18/10	appeal:drafting brief, research, tel. conf. w/ john re: amicus brief submission, etc.	5.10 150.00/hr	765.00
1/19/10	appeal: drafting brief.	3.20 150.00/hr	480.00
1/20/10	research and drafting brief, review and amend appendix, etc.	6.30 150.00/hr	945.00
1/21/10	appeal—drafting brief, research on issues inc. obj. to jury instructions and section 609.	5.80 150.00/hr	870.00
1/22/10	drafting brief, tel. confs. w/ counsel re: additional submissions, reviewing appendix, correcting, research.	5.30 150.00/hr	795.00

		Hrs/Rate	Amount
1/23/10	appeal—drafting appeal papers, emails other counsel on sep submissions.	7.20 150.00/hr	1,080.00
1/24/10	preparing brief; emails other counsel on amicus submissions.	6.90 150.00/hr	1,035.00
1/25/10	drafting / revising brief; tel. confs w/ counsel press.	7.20 150.00/hr	1,080.00
1/26/10	drafting app brf., etc.	5.10 150.00/hr	765.00
1/27/10	drafting appeal, revising, emails amicus curie counsel, emails counsel press.	5.30 150.00/hr	795.00
1/28/10	drafting /finalizing appeal.	4.50 150.00/hr	675.00
	For professional services rendered	83.70	$13,552.50
	Additional Charges:		
1/26/10	printing down payment		2,000

	Hrs/Rate	Amount
Total additional charges		$2,000
Total amount of this bill		$15,552.50
Previous balance		($4,160.53)
Balance due		$11,391.97

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Invoice submitted to:
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March 01, 2010

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12852

Professional services

		Hrs/Rate	Amount
2/5/10	appeal— emails other counsel re: their sub-missions on appeal.	0.30 150.00/hr	45.00
2/7/10	non-appeal; prep opp to motion to bring assets into state; email supap; research cases dealing with seizure of assets.	2.30 325.00/hr	747.50
2/8/10	drafting opp to motion; tel. conf. w/ supap, re-search.	3.10 325.00/hr	1,007.50

		Hrs/Rate	Amount
2/9/10	drafting opp to motion, research, drafting supap decl., emails.	1.80 325.00/hr	585.00
2/10/10	research motion, emails.	2.40 325.00/hr	780.00
2/12/10	tel. conf. w/ supap, emails, file papers.	0.70 325.00/hr	227.50
2/16/10	review reply brf on mot to receive assets.	0.30 325.00/hr	97.50
2/17/10	review ct order, emails.	0.40 325.00/hr	130.00
	For professional services rendered	11.30	$3,620.00
	Additional Charges:		
2/5/10	further charges from counsel press—printing/publishing appendix for appeal. copies postage		1,214.17
	Total additional charges		$1,214.17

		Hrs/Rate	Amount
	Total amount of this bill		$4,834.17
	Previous balance		$11,391.97
	Accounts receivable transactions		
2/14/10	Payment—thank you		($19,982.00)
	Total payments and adjustments		($19,982.00)
	Credit balance		($3,755.86)

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Invoice submitted to:
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April 01, 2010

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12891

Professional services

		Hrs/Rate	Amount
3/1/10	review opp on appeal.	0.30 150.00/hr	45.00
3/3/10	call 2d cir, emails john re: reply.	0.40 150.00/hr	60.00
3/7/10	review appelle's brief, research.	0.30 150.00/hr	45.00
3/8/10	review amicus motion tel conf. w/ amicus—john, cont. prep reply brief and review new amicus.	1.70 150.00/hr	255.00

		Hrs/Rate	Amount
3/9/10	drafting reply brief, tel. conf. w/ john.	5.20 150.00/hr	780.00
3/10/10	drafting reply brief.	2.60 150.00/hr	390.00
3/11/10	drafting reply brf.	2.80 150.00/hr	420.00
3/12/10	revise, finalize reply brf, review tables, etc. and emails, review opp to motion for oral argument by amicus.	1.90 150.00/hr	285.00
	For professional services rendered	15.20	$2,280.00
	Previous balance		($3,755.86)
	Credit balance		($1,475.86)

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Invoice submitted to:
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May 02, 2010

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12849

Professional services

		Hrs/Rate	Amount
4/21/10	complete new forms for appeal per court order.	0.30 150.00/hr	45.00
	For professional services rendered	0.30	$45.00
	Previous balance		($1,475.86)
	Credit balance		($1,430.86)

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June 01, 2010

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #12853

Professional services

		Hrs/Rate	Amount
5/15/10	studying for argument, update research.	2.30 150.00/hr	345.00
5/16/10	reviewing / preparing for argument.	2.70 150.00/hr	345.00
5/17/10	prep for appeal argument.	2.60 325.00/hr	845.00
5/18/10	met w/ norman levine re: prep for argument on 5/19 and prep for argument.	2.80 150.00/hr	420.00

		Hrs/Rate	Amount
5/19/10	prep fro argument on appeal.	5.10 150.00/hr	765.00
5/20/10	emails supap.	0.20 150.00/hr	30.00
	For professional services rendered	15.70	$2,810.00
	Additional Charges:		
5/4/10	counsel press balance for binding, publishing briefs, etc.		3,750.00
5/21/10	taxis to/from court		16.00
	Total additional charges		$3,766.00
	Total amount of this bill		$6,576.00
	Previous balance		($1,430.86)
	Accounts receivable transactions		
5/31/10	Payment—Thank You		($2,000)
	Total payments and adjustments		($2,000)
	Balance due		$3,145.14

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SAM P. ISRAEL, ESQ.

Invoice submitted to:

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January 02, 2011

In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #13004

Professional Services

		Hrs/Rate	Amount
12/14/10	review costco decision, etter to court by Dunnegan, emails other counsel on decision.	0.30 150.00/hr	45.00
	For professional services rendered	0.30	$45.00

	Hrs/Rate	Amount
Previous balance		$3,145.14
Balance due		$3,190.14

SAM P. ISRAEL P.C.
1 LIBERTY PLAZA
23RD FLOOR
NEW YORK, N.Y. 10006

TEL: (212) 201-5345
FAX: (212) 201-5343
E-MAIL: SMISRAEL@AOL.COM

SAM P. ISRAEL, ESQ.

Invoice submitted to:

Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3 April 3, 2011
Los Angeles, CA 90034
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #13083

Professional Services

		Hrs/Rate	Amount
3/31/11	review court order on appeal follow-up.	0.30 150.00/hr	45.00
	For professional services rendered	0.40	$60.00
	Previous balance		$3,190.14
	Balance due		$3,250.14

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SAM P. ISRAEL, ESQ.

Invoice submitted to:

Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3 May 01, 2011
Los Angeles, CA 90034
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #13110

Professional Services

		Hrs/Rate	Amount
4/4/11	tel. conf. w/ john mitchell, emails supap.	0.30 150.00/hr	45.00
4/10/11	researching supplemental brief for appeal, start drafting.	2.30 150.00/hr	345.00

		Hrs/Rate	Amount
4/11/11	drafting response to app order and research.	2.30 150.00/hr	345.00
4/12/11	drafting brief, review letter to appeals court from other counsel.	3.30 150.00/hr	495.00
4/13/11	drafting supp. brief research.	3.60 150.00/hr	540.00
4/14/11	drafting let brief, emails john.	3.80 150.00/hr	570.00
4/15/11	drafting letter brief, emails, file.	3.10 150.00/hr	465.00
4/20/11	review reply brief by wiley	0.30 150.00/hr	45.00
	For professional services rendered	19.00	$2,850.00
	Previous balance		$3,250.14
	Balance due		$6,100.14

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SAM P. ISRAEL, ESQ.

Invoice submitted to:

Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3 July 31, 2013
Los Angeles, CA 90034
In Reference To: *Wiley v. Kirtsaeng*; SDNY 08-CV-7834
Invoice #13736

Professional Services

		Hrs/Rate	Amount
10/23/12	review argument	1.30 385.00/hr	500.50
10/24/12	prep for argument	1.80 385.00/hr	693.00
10/25/12	moot court by tele-phone	1.40 385.00/hr	539.00

		Hrs/Rate	Amount
10/27/12	prep for superior court	6.20 385.00/hr	2,387.00
10/28/12	prep for & travel to DC for argument	7.80 385.00/hr	3,003.00
10/29/12	appear for argument, prepare & post argument review	7.80 385.00/hr	3,003.00
10/30/12	post argument conference	2.80 385.00/hr	1,078.00
11/2/12	return to NY	3.10 385.00/hr	1,193.00
	For professional services rendered	32.20	$12,397.00
	Additional Charges:		
10/28/12	hotel & travel for Sam & El		2,500
	Total additional charges		$2,500
	Total amount of this bill		$14,897.00
	Previous balance		$11,388.14
	Balance due		$26,285.14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

John Wiley & Sons, Inc.

Plaintiff,

v.

Supap Kirtsaeng

Defendant.

Civil Action No. 08-cv-7834-DCP

[FILED 8/01/13]

DECLARATION OF E. JOSHUA ROSENKRANZ IN SUPPORT OF DEFENDANT SUPAP KIRTSAENG'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

DECLARATION OF E. JOSHUA ROSENKRANZ

I, E. Joshua Rosenkranz, declare as follows:

1. I am a member of the bar of the State of New York and the firm Orrick, Herrington & Sutcliffe, LLP ("Orrick"), counsel to defendant Supap Kirtsaeng ("Mr. Kirtsaeng") in this action. I make this affidavit in support of Mr. Kirtsaeng's Motion For Award of Attorneys' Fees and "Full Costs" Under Section 505 of the Copyright Act.

STATEMENT

2. I have been an appellate litigator for over twenty years and regularly handle matters in the Supreme Court of the United States. I have filed briefs in more than 60 Supreme Court cases and have presented oral argument in the Court eight times. I speak regularly about appellate and Supreme Court practice, including organizing and personally presenting Continuing Legal Education programs focused on the Court for corporate clients and for the bar more generally. I also serve frequently in moot courts as a mock Supreme Court justice to help other advocates prepare for oral argument.

3. I am the billing partner for this client and this matter, and am responsible for overseeing all attorneys' fees and disbursements charged to this matter by Orrick.

4. The core Orrick legal team working on the appeal consisted of three partners, four associates, and one paralegal. Attached hereto as Exhibit A are true

and accurate biographies of the principal Orrick attorneys who worked on the appeal.

5. I served as Orrick's primary lead trial counsel. I am located in Orrick's New York office and head Orrick's Appellate Practice Group. I am *summa cum laude* graduate of Columbia University, a graduate of Case Western Reserve University and a *magna cum laude* graduate of Georgetown University Law Center. I am a former law clerk to U.S. Supreme Court Justice William J. Brennan Jr. and then-Judge Antonin Scalia on the D.C. Circuit. I have personally argued more than 170 appeals in state and federal appellate courts across the nation and have served as attorney of record in some 1,500 other appeals. I have played a leading role in more than a dozen Supreme Court cases, having argued eight in the past eight years. I was named "Litigator of the Year" by the American Lawyer in its January 2012 edition and was named an "Appellate MVP" for 2011 by Law360. My attorney rate was $985 per hour in 2011, and $1,020 per hour in 2012 and 2013.

6. Orrick's team also consisted of two other firm partners who assisted in preparing the appeal, Annette L. Hurst ($820 per hour in 2011, and $850 per hour in 2012-13) and Lisa T. Simpson ($785 per hour in 2011 and $795 per hour in 2012-13). Both are members of Orrick's Intellectual Property Group. Annette Hurst is a partner in Orrick's San Francisco office. Ms. Hurst, a graduate of New York University School of Law and a *magna cum laude* graduate of Miami University, has been named one of the top 75 IP litigators in California by The Daily Journal every year

since 2010 and in January 2013 was named "Female Litigator of the Year—West" by Benchmark Litigation. Ms. Hurst has more than 20 years of experience in copyright litigation. Lisa Simpson is a partner in Orrick's New York Office. Ms. Simpson is a *cum laude* graduate of Duke University and graduated with high honors from Duke School of Law. She too has nearly 20 years of copyright experience.

7 Consistent with my own experience, these billing rates are well within the range of reasonable partner rates for large law firms in New York City. This is confirmed by recent surveys reporting on attorney rates by city. I attach a true and correct copy of one such survey from the National Law Journal as Exhibit B. The National Law Journal Survey lists the range of partner billing rates in New York City for firms of similar size as between $550 per hour and $1200 per hour.

8. Orrick's core team also included four associates, Marc R. Shapiro, Alex J. Feerst, Brian D. Ginsberg, and Nicholas F Lenning, whose hourly rates ranged from $330 per hour to $615 per hour, depending on seniority. These rates were reasonable and consistent with rates at NYC firms of similar size during the applicable time period. *See* Exhibit B.

9. Marc R. Shapiro graduated *cum laude* from New York University School of Law in 2003. Alex J. Feerst graduated from Columbia Law School in 2009. Mr. Feerst externed for the Honorable Barbara S. Jones of the Southern District of New York and the Honorable Sonia Sotomayor then of the Second Circuit Court of Appeals. Brian D. Ginsberg graduated

from Columbia Law School in 2007. Mr. Ginsberg has clerked for the Hon. Michael A. Chagares of the U.S. Court of Appeals for the Third Circuit and the Hon. Anita B. Brody of the U.S. District Court for the Eastern District of Pennsylvania. Nicholas F. Lenning graduated for Duke Law School in 2011. Mr. Lenning clerked for the Hon. Paul L. Friedman of the U.S. District Court for the District of Columbia.

10. Mr. Shapiro left the team in 2012 to serve as clerk to Judge Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit and was replaced on the team by Brian D. Ginsberg. The requested fee amount on this motion has been adjusted to account for this change in staffing by deleting time recorded by Mr. Ginsberg spent familiarizing himself with the issues in the case and transitioning from Mr. Shapiro to Mr. Ginsberg.

11. The lead paralegal on the team, Juanita M. Greenfield, has been a legal assistant for nine years and has worked on numerous complex litigations.

12. Additional attorneys and support staff assisted with the appeal as needed, providing valuable and important assistance. However, Orrick is only seeking attorneys' fees for the core legal team on this motion.

13. Assembling a team with this number and assortment of attorneys is typical and customary for appeals to the U.S. Supreme Court.

14. During the course of the appeal, several attorneys' standard hourly rates were increased at the

beginning of the 2012 and 2013 calendar year. Those increases were customary in the legal industry for firms of Orrick's size and were made in consultation with the industry practice as a whole.

15. The rates sought here are the standard rates that Orrick charges paying clients. Orrick surveys the market before setting our rates and has come to conclude that these rates are customary.

16. Pursuing an appeal before the Supreme Court requires numerous rounds of briefing (the petition for certiorari, the reply on that petition, the opening merits brief, and the reply merits brief), the identification and coordination of the amici, and the preparation for the oral argument. In my experience it is reasonable and customary to dedicate significant time to each of these important tasks. While litigating other cases before the U.S. Supreme Court, my teams have dedicated a similar number of hours.

The Certiorari Stage

17 My team's involvement in this case began at the petition-for-certiorari stage.

18. After the Second Circuit denied Mr. Kirtsaeng's appeal, and denied his request for hearing en banc, Mr. Kirtsaeng and his counsel enlisted Orrick for assistance in seeking review by the U.S. Supreme Court. In my experience it is very common for parties with cert-worthy issues to retain specialized appellate practitioners, particularly those specialized in appeals before the U.S. Supreme Court, to work

alongside the party's current counsel to bring and argue the case before the Supreme Court.

The Cert Petition

19. The first thing we did in preparing the cert petition was formulate our legal argument. To be sure, our primary focus was on demonstrating that the Second Circuit's decision created a split of appellate authority, and that the issues involved were nationally and urgently important. But, as a preliminary matter, we had to craft and fully explore our actual merits position.

20. And from the beginning, we knew this was no ordinary case and that we faced an unusually difficult challenge.

21. This case presented a uniquely complex question: what is the meaning of the phrase "lawfully made under this title" in § 109(a) of the Copyright Act. While the question focuses on those five little words, the interplay (1) internally between the countless provisions of the Copyright Act and (2) externally between copyright, patent, and trademark law causes repercussions throughout intellectual property that had to be considered.

22. Two years earlier, the Supreme Court had considered the exact same question, whether the "first sale" doctrine applies to copyrighted works made abroad, in *Costco v. Omega*, 131 S. Ct. 565 (2010), and reached an impasse. With Justice Kagan recused, the Court split four to four, leaving the ques-

tion unresolved. On top of this, Justice Kagan, as Solicitor General, had authored a lower-court amicus curiae brief in that case arguing *against* the side taking "our" position. In short, before any brief was submitted in this case, four justices were pre-disposed against us, with a fifth potentially leaning the same direction.

23. To combat the entrenched four-to-four split from *Costco*, we adopted a novel legal argument that was not presented previously. In *Costco*, the petitioner presented a "hybrid" approach to the first-sale doctrine: copies made overseas were subject to the first-sale doctrine *unless* the copies are subject to a foreign distributor's exclusive license to operate in a particular country. While this position sought to reconcile language from a prior Supreme Court opinion, *Quality King Distributors, Inc. v. L'Anza Research International, Inc.*, 523 U.S. 135 (1998), it was unmoored from the statutory text. Because this argument was unsuccessful, we offered a more statutorily faithful argument, but one that encountered additional problems in attempting to reconcile the Supreme Court's prior language in the *Quality King* case.

24. In light of the prior history before the Supreme Court and the new arguments presented by both the Ninth Circuit and the Respondent, we could not simply resubmit the same arguments as had been presented in *Costco*. Instead, the legislative history, legal precedent and Copyright Act had to be approached from a new perspective, requiring entirely

new and substantial research. This included collecting and reviewing the entirety of the legislative history record of relevant portions of the Copyright Act and conducting legal research into a wide range of areas of the law.

25. Another critical element of our cert petition was demonstrating that the underlying issue in the case was nationally important, and that the resolution of the issue was urgently required. We drew from a wide variety of sources to make these showings, and there is no one-size-fits-all approach. A tremendous amount of research had to be done, empirical evidence gathered and analyzed, and the like.

26. In our case, the empirical policy questions largely involved the scope of the issue *(i.e.*, how many and what industries relied upon the first-sale doctrine), and the effect of resolving that issue according to our position or Respondent's. That meant examining reams of business and manufacturing data apart from more traditional legal sources.

27 We argued that even measured against cases important enough to reach the high court, this case carried unusually high stakes: a multi-billion market, impacting everyday consumers and global corporations, hung in the balance. As Reuters noted at the time, "this is a hugely consequential issue." Reuters, Supreme Court takes another look at gray market resales, April 17, 2012, *available at*_http://www.reuters.com/article/2012/04/17/us-frankel-graymarket-idUSBRE83G15H20120417 (attached as Exhibit C). If Wiley prevailed, we argued, copyright holders would gain the power to exert permanent downstream

control over the sale of used copies. Meanwhile, if we prevailed, copyright holders would likely lose the ability to segment markets, resulting in a significant loss of revenue. Thus, as Reuters observed, the Court's "ultimate ruling w[ould] profoundly affect the approximately $63 billion "gray market" business." *Id.*

The Amicus Process

28. The cert-stage work did not end after the cert petition was filed, however.

29. To further demonstrate the importance of the case, we coordinated with a variety of amici curiae to show (in addition to simply tell) how major players across a broad spectrum of constituencies were keenly interested in the case and want it to be resolved in the way we were urging.

30. This process was so time-consuming that it required dedicated attention separate and apart from preparing the cert petition. We had to identify the potential amici, and then develop custom-tailored pitches to present to them. Then, we had to coordinate with each amicus and among amici to ensure that each of their briefs added value to the effort and wasn't merely duplicative of other submissions. Additionally, this job was inherently complex simply because the whole idea was to assemble as many and as diverse a group of supporters as possible, but the coordination required grew exponentially as the number of amici got larger and larger.

31. We coordinated a diverse group of cert stage amici, including:

a. eBay

b. NetCoalition

c. the Computer & Communications Industry Association

d. the Internet Commerce Coalition

e. TechNet

f. NetChoice

g. TechAmerica

h. Public Knowledge

i. Electronic Frontier Foundation

j. U.S. Public Interest Research Group

k. the Retail Industry Leaders Association

l. American Free Trade Association

m. Quality King Distributors

32. Each of these amici either filed or joined in a brief supporting our cert petition.

Reply Brief

33. After the amicus process concluded, the next step is to prepare a reply brief addressing the issues raised by the Respondent's brief in opposition to cert. This required additional research and strategizing Respondent made numerous arguments, including that no "circuit split" was implicated, that the Second Circuit's opinion was consistent with Supreme Court precedent, and that the Court's review was unnecessary because nothing had changed since *Costco*.

34. In total, 5 Orrick attorneys—myself, as well as Annette L. Hurst, Lisa T. Simpson, Marc R. Shapiro, and Alex J. Feerst—spent approximately 634 hours performing the work necessary to adequately complete all the cert-stage tasks: producing the cert petition, coordinating the amicus effort, and producing the reply brief. In my experience, having represented clients in at least two dozen cert-stage matters, this expenditure of efforts was customary and reasonable.

Merits Stage

35. Once the Court granted cert, we proceeded to the merits stage.

Opening Brief

36. While we had already put considerable effort into refining our merits position, now the merits were the main event, and it became critical to formu-

late our position comprehensively and with full precision. Our opening brief presented four principal arguments:

a. First, we argued that the ambiguity arising from the "lawfully made under this title" language of § 109(a) arose as much from § 602 (the importation provision) as from § 109 itself. But we argued this ambiguity had been resolved by a prior Supreme Court case, *Quality King*, with § 109 taking precedence over § 602.

b. Second, we argued that our interpretation of "lawfully made under this title" was the most consistent with other provisions of the Copyright Act and the Copyright Act's legislative history.

c. Third, we argued that arguments typically offered in support of Wiley's position caused havoc with other provisions of the Copyright Act. We also argued that, contrary to Wiley's assertions, our interpretation did not implicate the presumption against extraterritoriality nor was it inconsistent with language from *Quality King*.

d. Fourth, we argued that canons of statutory interpretation and various presumptions concerning congressional intent favored our interpretation.

The Amicus Process

37 Also, we had to start the amicus process over again, launching a new and expanded effort, and coordinating with existing and new amici as they, too, fine-tuned their approach to the merits stage. We were fortunate enough to be able to coordinate the following amici:

a. American Library Association

b. The Association of College and Research Libraries

c. The Association of Research Libraries

d. The Association of Art Museum Directors

e. The Art Institute of Chicago

f. The J. Paul Getty Trust

g. Museum Associates d/b/a Los Angeles County Museum of Art

h. The Museum of Modern Art

i. The San Francisco Museum of Modern Art

j. The Solomon R. Guggenheim Foundation

k. The Whitney Museum of American Art

l. The Asian Art Museum, Chong-Moon Lee Center for Asian Art and Culture

m. The Cedar Rapids Museum of Art

n. The Cleveland Museum of Art

o. The Columbus Museum

p. The Currier Museum of Art

q. The Dallas Museum of Art

r. The Farnsworth Art Museum

s. The Flint Institute of Arts

t. The Georgia Museum of Art

u. The Hunter Museum of American Art

v. The Indiana University Art Museum

w. The Michael C. Carlos Museum

x. The Milwaukee Art Museum

y. The Mint Museum

z. The Museum of Latin American Art

aa. The Nasher Museum of Art at Duke University

bb. The Palmer Museum of Art

cc. The Philbrook Museum of Art

dd. The Portland Art Museum

ee. The Timken Museum of Art

ff. The Toledo Museum of Art

gg. The Walker Art Center

hh. Association of Service and Computer Dealers

ii. Costco Wholesale Corporation

jj. eBay Inc.

kk. Google, Inc.

ll. Center for Democracy & Technology

mm. CHEGG

nn. Computer & Communications Industry Association

oo. Internet Commerce Coalition

pp. NetCoalition

qq. NetChoice

rr. TechAmerica

ss. Entertainment MerchanNetts Association

tt. National Association of Recording Merchandisers

uu. Goodwill Industries International, Inc.

vv. Powell's Books Inc.

ww. Strand Book Store, Inc.

xx. Half Price Books, Records, Magazines, Inc.

yy. Harvard Book Store Inc.

zz. Public Knowledge

aaa. Electronic Frontier Foundation

bbb. American Association of Law Libraries

ccc. Special Libraries Association

ddd. U.S. Public Interest Research Group

eee. Retail Litigation Center, Inc.

fff. National Association of Chain Drug Stores

ggg. American Free Trade Association

hhh. International Imaging Technology Council

iii. Quality King Distributors, Inc.

jjj. Professor Howard Abrams

kkk. Professor Margreth Barrett

lll. Professor Annemarie Bridy

mmm. Professor Irene Calboli

nnn. Professor Andrew Chin

ooo. Professor Margaret Chon

ppp. Professor Ralph Clifford

qqq. Professor William Gallagher

rrr. Professor Shubha Ghosh

sss. Professor Llewellyn Gibbons

ttt. Professor Eric Goldman

uuu. Professor Faye Jones

vvv. Professor Ariel Katz

www. Professor Yvette Liebesman

xxx. Professor Deirdre Mulligan

yyy. Professor Aaron Perzanowski

zzz. Professor David Post

aaaa. Professor Blake Reid

bbbb. Professor Pamela Samuelson

cccc. Professor Jason Schultz

dddd. Professor Jessica Silbey

eeee. Professor Katherine Strandburg

ffff. Professor Rebecca Tushnet

gggg. Professor Jennifer Urban

hhhh. Professor Ryan Vacca

Reply Brief

38. Respondent filed its response brief, and, also like during the cert stage, we expended considerable effort determining the best way to address Respondent's points in our reply brief.

39. But this reply brief required more effort still, because, unlike at the cert stage, the respondent enlisted amici supporting its position, and we had to respond to those arguments, as well.

40. Most notably, the U.S. Solicitor General participated as one of respondent's amici and filed a brief against us. The SG is the most influential litigant before the Supreme Court. Thus, even though the SG was not a formal party to the case, its brief had to be addressed with the same level of scrutiny and exaction as Wiley's brief. And the SG made some inventive arguments that were not made by Wiley and therefore required substantial new legal and historical work. For example, instead of making a statutory interpretation argument, the SG presented an argument rooted in common law: that a century-old Supreme Court case, *Bobbs-Merrill*, had determined the extent of the "right to vend" which had been incorporated into the Copyright Act when it was passed. Thus, the SG argued that the "right to vend" provided a separate limitation on copyright holders, before the first sale doctrine is implicated. This unique argument had not been presented by any party in either *Costco* or *Kirtsaeng*, or even by the SG himself in previous cases.

41. In total, 7 Orrick attorneys and support staff—myself, as well as Annette L. Hurst, Lisa T. Simpson, Marc R. Shapiro, Alex J. Feerst, Brian D. Ginsberg, Nicholas F. Lenning, and paralegal Juanita M. Greenfield—spent approximately 1399 hours performing the work necessary to adequately complete the opening brief and coordinate the amicus effort for

the merits portion of the case, and approximately 678 hours producing the reply brief. In my experience, this expenditure of effort was typical for this stage of a U.S. Supreme Court appeal.

Oral Argument

42. After briefing was complete, the next step was to focus on oral argument. And even though the issues have already been narrowed and focused by the briefing, preparing for oral argument was a huge undertaking. The Court didn't have to stick to any script; it could ask about anything and everything: doctrinal legal issues, policy implications, factual questions, and everything else on the spectrum. To prepare for this, my team went back through the Supreme Court briefs—party and amicus, cert and merits, amounting to approximately 1,000 of pages of material across 34 briefs—the joint appendix and cert petition appendix, the briefing and appendices in the Second Circuit, and the record in the district court to prepare for all conceivable fact questions, procedure questions, law questions, policy questions, practical questions, and multi-layered hypotheticals.

43. Thereafter, I organized and prepared for several moot courts, inviting other Orrick lawyers and sometimes outside parties to judge and critique my oral argument. Each moot consisted of an "argument" session of an hour or two, where the panelists played the role of Supreme Court justices asking me questions, and an approximately-one-hour postmortem, where the entire assembled group discussed the argument and offers advice and comments. It is standard

practice among appellate specialists to perform moot courts while preparing for a Supreme Court case.

44. For this particular case, we arranged three moot courts.

45. The first moot was an internal one, with Orrick lawyers and outside co-counsel serving as the mock justices.

46. The second moot was held at the Georgetown University Law Center's Supreme Court Institute ("SCI"). The panel here included a diverse group of outside lawyers: private-practice appellate specialists, copyright professors, alumni of the SG's office, and more.

47 The third moot was held at the offices of Public Citizen. The panel for this moot consisted of copyright experts and private-practice appellate specialists including Roy Englert, the lawyer who argued "our" position in *Costco*.

48. After the moots, I continued to dialogue with the Orrick team and review and revise my preparatory materials. This review and revision continued up to (and, indeed, during the early morning of) the day of argument.

49. In my experience this type of preparation is typical for an argument before the Supreme Court.

50. In total, 6 Orrick attorneys and support staff—myself, as well as Annette L. Hurst, Lisa T. Simpson, Alex J. Feerst, Brian D. Ginsberg, Nicholas

F. Lenning, and paralegal Juanita M. Greenfield—spent approximately 432 hours helping prepare me for oral argument.

The Decision

51. The Supreme Court decided the case in our favor in a six-to-three majority opinion authored by Justice Breyer. It held that the first-sale doctrine applies to copyrighted goods no matter where they were manufactured.

52. The media widely recognized this result as extraordinary. They noted that Mr. Kirtsaeng overcome a U.S. government that "tried, and failed, to convince the court to apply a narrower definition to the first-sale doctrine," Daniel Fisher, Forbes, Supreme Court Upholds Right To Sell Foreign-Published Books, available at http://www.forbes.com/sites/danielfisher/2013/03/19/supreme-court-upholds-right-to-sell-foreign-published-books (attached as Exhibit D), and that the decision was "likely worth billions, even trillions, of dollars" and had "repercussions that extend from trade policy to yard sales." Nina Totenberg, NPR, Supreme Court OKs Discounted Resale of "Gray Market" Goods, available at http://www.npr.org/blogs/thetwo-way/2013/03/19/174757355/supreme-court-oks-discounted-resale-of-gray-market-goods (attached as Exhibit E). News outlets recognized it as a "victory for those who buy and sell books, movies, music, and artwork, and perhaps even furniture, electronics, automobiles and clothing—anything that may be considered 'intellectual property.'" Bill Mears, CNN, High court rules for seller in copyright dispute over foreign-

made goods, available at http://www.cnn.com/2013/03/19/us/supreme-court-copyright-dispute/index.html?iref=allsearch_____(attached as Exhibit F). The result "surprised legal experts from both camps." April Dembosky, Financial Times, Publishers mull tech tactics after legal defeat over imports, available at http://blogs.ft.com/tech-blog/2013/03/publishers-mull-tech-tactics-after-legal-defeat-over-imports (attached as Exhibit G). It was called a "major development, both for the industry, and for the broader debate over copyright in the digital age." Andrew Albanese, Publisher's Weekly, What Does *Kirtsaeng v. Wiley* Mean For the Industry?, available at http://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/56491-a-textbook-case.html (attached as Exhibit H).

53. Additionally. SCOTUSblog lauded the value of the oral argument in particular. It opined that "[t]his well might be the rare case of a victory at oral argument." Ronald Mann, SCOTUSblog, Opinion analysis: Justices reject publisher's claims in gray-market copyright case, available at_http://www.scotusblog.com/2013/03/opinion-analysis-justices-reject-publishers-claims-in-gray-market-copyright-case/ (attached as Exhibit I).

54. All told, 7 Orrick attorneys and support staff spent approximately 3,144 hours litigating this matter from start to finish in the Supreme Court. In my experience, that expenditure of effort was customary and reasonable for such an appeal.

SUMMARY OF TOTAL EXPENDITURES

55. The hourly rates for the partners working on this matter, and the hours worked, were as follows:

ATTORNEY	2011 RATE	2012 RATE	2013 RATE	HOURS
Annette L. Hurst	$820 per hour	$850 per hour	$850 per hour	227.80
E. Joshua Rosenkranz	$985 per hour	$1,020 per hour	$1,020 per hour	455.10
Lisa T. Simpson	$785 per hour	$795 per hour	$795 per hour	239.00

56. The hourly rates for the associates working on this matter, and the hours worked, were as follows:

ATTORNEY	2011 RATE	2012 RATE	2013 RATE	HOURS
Alex J. Feerst	$330 per hour	$450 per hour	$450 per hour	524.00
Brian D. Ginsberg	n/a	$615 per hour	$615 per hour	346.20
Nicholas F Lenning	n/a	$355 per hour	$450 per hour	431.70

Marc R. Shapiro	$530 per hour	$575 per hour	n/a	711.25

57. The hourly rates for the support staff working on this matter, and the hours worked, were as follows:

PARALEGAL	2011 RATE	2012 RATE	2013 RATE	HOURS
Juanita M. Greenfield	n/a	$250 per hour	n/a	208.65

58. Across all Orrick attorneys and support staff, the total number of hours worked was 3,143.70.

59. Attached hereto as Exhibit J is a spreadsheet generated from billing records for this matter, as maintained by Orrick in the regular course of business. The spreadsheet reflects Orrick attorneys' and paralegal's time spent on this matter. The spreadsheet includes an itemized, chronological list of each attorney's and paralegal's time recorded, along with corresponding detailed descriptions for the work performed. As noted above, we have removed from this spreadsheet all non-core timekeepers and additional time to account for personnel changes and other billing inefficiencies. As indicated on the spreadsheet, the fees spent on this matter total $1,884,230.

60. Attached hereto as Exhibit K is a spreadsheet, created from invoices generated for this matter, reflecting disbursements generated in this matter related to the appeal. The disbursements include, for ex-

ample, outside vendor costs, word processing and document costs, travel expenses, and telephone and other communication costs.

61. The total amount of disbursements sought by Orrick is $40,412.54. I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of July, 2013, at New York, New York.

/s/ E. Joshua Rosenkranz
E. Joshua Rosenkranz

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WILEY &
SONS, INC.,

Plaintiff,

Case No. 08-cv-07834 (DCP) [FILED 10/24/13]

v.

SUPAP KIRTSAENG,

Defendant.

DECLARATION OF MARIA DANZILO IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEY FEES

I, Maria A. Danzilo, hereby declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am Legal Director at John Wiley & Sons, Inc. ("Wiley"). My responsibilities at Wiley involve the protection of its copyrights, including its copyrights in its higher education textbooks. Among other things, I supervise Wiley's efforts to enforce its copyrights via litigation. I am making this declaration in support of Plaintiff Wiley's Opposition to Defendant Supap Kirtsaeng's Motion for Attorney Fees.

2. Although Defendant in the above-referenced action seeks a substantial award pursuant to 17 U.S.C. § 505, his fee petition failed to include certain

basic information. When asked to provide this information, Defendant, acting through his counsel, refused. Accordingly, via letter to Judge Pogue dated September 18, 2013, Wiley requested a conference with the Court. A copy of that letter is attached hereto as **Exhibit A**.

3. I have been informed that in response to Wiley's letter, the Court held a telephone conference on September 26, 2013. After hearing argument, the Court overruled Defendant's objections to producing copies of his fee agreements/billing arrangements with his trial and appellate counsel, along with information sufficient to identify what amounts had been invoiced, had been paid, and by whom. The Court ordered Defendant to produce these materials by October 10, 2013. During that conference, Wiley indicated it was willing to identify the amount of its legal fees, broken down by the various phases of this case. Wiley's disclosures, which are also due by October 10, 2013, are set forth in the following paragraphs.

4. From inception of this case until shortly after Defendant filed his petition in the Supreme Court, and then for a period of time after remand from the Supreme Court, the law firm of Dunnegan & Scileppi, LLC (and its predecessor, Dunnegan LLC, collectively "Dunnegan") served as Wiley's principal outside counsel in this matter. During that period, Dunnegan billed a total of $162,407.50 in fees and $16,965.20 in costs. That figure breaks down roughly as follows: $133,855.21 in fees and $16,530.28 in costs at the trial level; $22,204.79 in fees and $307 71 in costs at the Second Circuit; and $6,347.50 in fees

and $127.21 in costs at the Supreme Court or thereafter.

5. In connection with opposing Defendant's efforts to appeal the Second Circuit Court of Appeals ruling to the United States Supreme Court, Wiley retained the law firm of Gibson Dunn & Crutcher LLP ("Gibson Dunn"). Led by Theodore B. Olson, Gibson Dunn charged a flat fee of $300,000. That flat fee included $50,000 to prepare a brief in opposition to the petition for a writ of certiorari. The remaining $250,000 was for Gibson Dunn to prepare an opening and reply brief in the Supreme Court, as well as to prepare for and participate in oral argument.

6. In addition to Dunnegan and Gibson Dunn, Wiley has recently retained Oppenheim + Zebrak, LLP ("O+Z") to oppose Defendant's fee petition. Those fees and costs are ongoing.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Maria A. Danzilo
Maria A. Danzilo

Executed on October 9, 2013
in Hoboken, NJ

Oppenheim + Zebrak, LLP

Matthew J. Oppenheim
4400 Jenifer Street, NW
Suite 250
Washington, DC 20015
matt@oandzlaw.com

September 18, 2013

Via ECF [FILED 10/24/13]

The Honorable Donald C. Pogue
Chief Judge
U.S. Court of International Trade
One Federal Plaza
New York, N.Y. 10278-0001

Re: ***John Wiley & Sons, Inc. v. Supap Kirtsaeng*; 08-cv-7834 U.S. District Court for Southern District of New York**

Dear Judge Pogue:

We represent Plaintiff John Wiley & Sons, Inc. in the above-referenced matter. Pursuant to Rule 37.2 of the Local Rules for the U.S. District Court for the Southern District of New York, Plaintiff respectfully asks for a conference with the Court concerning its request that Defendant Supap Kirtsaeng produce certain limited billing documentation. The information at issue is discrete in scope and unquestionably relevant. It bears directly upon the propriety of Defendant's counsel's extraordinary request for an award of over $2 million in attorneys' fees and costs, filed on July 31, 2013.

As Plaintiff will explain in detail, it is clear that no fee award should be granted in this case. Plaintiff lost only as a result of a complex ruling from the United States Supreme Court, after Plaintiff had earlier prevailed both at trial and on appeal. Under the

controlling Supreme Court and Second Circuit authority, Plaintiff acted in an objectively reasonable manner in asserting claims well founded in fact and law. The purposes of the Copyright Act will not be furthered in any manner by a fee award in the unique circumstances presented, let alone in the extraordinary amount requested by Defendant's counsel. Yet as the Court considers Defendant's fee request, it is critically important that it have access to those key facts that movants typically provide in a petition, but which Defendant has omitted.

Despite Plaintiffs attempts to meet and confer with Defendant, he has refused to voluntarily produce the requested documentation. His objections, discussed below, are without merit. Accordingly, Plaintiff requests that the Court compel Defendant to produce the requested information within 7 days of the Court's order, and that Plaintiff's opposition to the fee petition be due within 14 days thereafter. Any reply should be due 14 days after Plaintiff's opposition.

BACKGROUND

In this copyright infringement action, Plaintiff initially prevailed against Defendant at trial. The Second Circuit subsequently affirmed that award. The United States Supreme Court ultimately ruled in favor of Defendant on March 19, 2013. *Supap Kirtsaeng v. John Wiley & Sons, Inc.*, — *U.S.* —, 133 S. Ct. 1351, 185 L. Ed. 2d 392 (2013). As a result, all that remains is Defendant's motion for attorneys' fees and costs under the Copyright Act, 17 U.S.C. § 505. (Dkt. 92-26.)

Defendant seeks an award for, in his own words, an "astronomical" amount of legal work performed by Orrick, Herrington & Sutcliffe, LLP ("Orrick") at the Supreme Court stage of the case. (Dkt. 92-26, at 15.) A seven-lawyer team at Orrick handled the Supreme Court appeal to the tune of over 3,000 hours at rates of up to $1,020 per hour, resulting in notional legal fees of $1,884,230 and costs of $40,412.54. (Dkt. 92-14, at 17-18)[1] For reasons that are not yet disclosed, Orrick willingly undertook this matter fully recognizing that Mr. Kirtsaeng could not pay and would not be expected to pay these exorbitant fees.

So the Court is aware, Defendant in this case, Mr. Kirtsaeng, never actually paid anything to satisfy the judgment in this case (before it was overturned). Rather, long ago, Mr. Kirtsaeng apparently left the United States and returned to his native Thailand.

In any event, the fee petition does not indicate: (i) whether Defendant is responsible for paying the requested fees; (ii) whether the Orrick representation was at no cost to him; (iii) whether Orrick invoiced him for any of its work; (iv) whether he has paid Orrick anything to date; (v) the amount he has paid Israel to date; (vi) whether Orrick had agreed to charge Defendant a discounted rate, but now seeks to recover

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[1] Defendant also seeks an award for the work by his trial counsel, Sam P. Israel, P.C. ("Israel"), at all phases of the case. Defendant provided the Court with a total of twenty-two invoices for his work. (Dkt. 92-1, 11-13.) In tallying these invoices, it appears Defendant seeks an award of $105,454.50 in legal fees and $19,656.62 in costs for Israel's legal services.

its full "rack rates"; (vii) whether there are agreements or understandings in place concerning who keeps what portions of any fee award for work done by Orrick and/or Israel; and (viii) whether some other entity has already paid Orrick for its work on this matter.

In light of these significant omissions, Plaintiff made two requests to Defendant. First, Plaintiff asked for a copy of each billing arrangement (and any modifications thereto) that Defendant entered into with Israel, the Orrick law firm, and/or any other individual or entity concerning any of the fees or costs sought in the instant fee petition. Second, Plaintiff asked Defendant for information sufficient to identify what portions of the fee and cost entries in the instant fee request have been invoiced to Defendant and on what dates, along with information sufficient to show what amounts have been paid and by whom. Defendant's counsel has flatly refused to accommodate Plaintiffs request, no doubt hoping for his fee petition to be determined without consideration of this information.[2]

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[2] Unfortunately, it is not unheard of in cases like this for a prevailing Defendant to seek a fee award for amounts the Defendant had not paid and has no legal obligation to pay, where the Defendant would actually receive an improper windfall payment. In a parallel case to this one, *Pearson Educ., Inc. and John Wiley & Sons, Inc. v. Ganghua Liu,* non-party Costco Wholesale Corp. paid its prior Supreme Court counsel to take control of defendant Liu's efforts to appeal her case to the Supreme Court. *Pearson Educ.,* Case No. 1:08-cv-06152 (S.D.N.Y.) (Dkt. 85, at 6-7). The billing arrangement, which was initially not disclosed with defendant's fee petition, provided that the representation

ARGUMENT

In light of his surprising petition, Defendant should be required to produce the limited information reasonably requested by Plaintiff. This information is germane to Defendant's fee request and Plaintiff should have an adequate opportunity to include it in its opposition brief for the Court's consideration. Defendant's reasons for withholding the requested information are baseless.

1. Relevance

The information at issue is important to the Court's review of Defendant's fee request.

First, the information sought is relevant to whether the Court considers a fee award at all. The Copyright Act accords discretion to courts to award reasonable attorneys' fees, but it does not mandate an award for the prevailing party. 17 U.S.C. § 505. The statute indicates that, "the court in its discretion may allow the recovery of full costs by or against any party ...the court may also award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U.S.C. § 505. In determining whether it is appropriate to exercise its discretion, the factors to be considered by a court include: (1) objective unreasonableness; (2) frivolousness; (3) motivation; and (4) the

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was at no cost to Liu. The arrangement also provided that she and her trial counsel would split two-thirds of any award for the fees that Costco paid to its Supreme Court counsel for this work. *Id.* There, Judge Forrest indicated that Liu's fee petition will be denied by the Court. *See id.* (Dkt. 93).

need in particular circumstances to advance considerations of compensation and deterrence. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19, 114 S. Ct. 1023, 127 L. Ed. 2d 455 (1994). The information Defendant is withholding has direct relevance to the fourth *Fogerty* factor. In considering the need for compensation, it certainly is relevant whether Defendant is actually responsible for paying the fees for which "he" seeks to recover an award as part of "his costs," whether and to what extent he or anyone else has paid any amounts to date, and who or what entities are entitled to any fee award.

Even apart from its relevance to the *Fogerty* analysis, the requested information is important in the event the Court determines that some fee award is warranted and what is the appropriate amount. The Second Circuit has instructed that an attorney fee award as part of a party's "full costs" is to be made, if at all, to the prevailing party, not its counsel. *Crescent Publ'g Group, Inc. v. Playboy Enters.*, 246 F.3d 142, 150 (2d Cir. 2001) (citations omitted). It has added that a fee award should not amount to a "windfall" for the prevailing party, nor should a court award a fee that could be considered a penalty. *Id.* at 151. Accordingly, actual billing arrangements like those sought here are a "significant factor in determining what rate is 'reasonable" under the Copyright Act. *Id.*; *see also SEC v. Comsery Corp.*, 908 F.2d 1407, 1414-15 (rejecting fee request under the Equal Access to Justice Act on grounds that the individual's employer paid his legal expenses and the individual had no legal obligation to pay them, and to hold he "incurred" such fees would be "to turn the word upside down").

While Defendant has failed to disclose what he has paid (or not paid), case law makes clear that "the question of whether or not legal bills were paid by the client may be relevant" as to whether the fees are reasonable. *Therapy Prods. v. Bissoon* No. 07 Civ 8696, 2010 WL 2404317, 2010 U.S. Dist. LEXIS 67549, at *20-21 (S.D.N.Y. Mar. 31, 2010); *see also, e.g., Peter Fabrics, Inc. v. S.S. Hermes,* 765 F.2d 306, 317 (2d Cir. 1985) ("where actual payments are not being made by the indemnitee, lawyers and clients are more likely to inflate their estimate of what they would have agreed to as a reasonable fee."); *Video-Cinema Films, Inc. v. CNN, Inc,* No. 98 Civ. 7128, 2004 WL 213032, 2004 U.S. Dist. LEXIS 1428 (S.D.N.Y. Feb. 3, 2004) (refusing to award more in fees than the prevailing defendant actually paid to its counsel).

The fee petition mandates the appropriateness of this request. In his brief, Defendant claimed that he "expended a great amount of his personal and family's resources" defending this action. (Dkt. 96, at 2.) Defendant asserted that he "incur[red] astronomical costs and fees" with his appeal. (*Id.*, at 15.) Defendant further argued that a fee award is appropriate because he should not have to "shoulder the costs of his successful defense." (*Id.*, at 19.) Throughout he also attempts to develop a "David v. Goliath" theme. (*Id.*, at 4.) Having repeatedly made these assertions, it would be unfair for Defendant to withhold information such as what he has paid to date, whether he is responsible for paying other amounts, whether someone else has already paid Orrick, and other key terms concerning the fee arrangement. Costco Wholesale Corp., for example, an active, behind-the-scenes

participant in a similar case, *Pearson Education, Inc. and John Wiley & Sons, Inc. v. Ganghua Liu*, Case No. 1:08-cv-06152 (KBF), pending in the Southern District of New York, is certainly not a "David" in this type of litigation.

Defendant does not even appear to contest the relevance of the foregoing information sought by Plaintiff. Instead, Defendant tries to justify withholding the information by arguing that the request is untimely or should be allowed only if he receives "reciprocal access" to Plaintiff's billing records. Defendant is wrong.

2. **The Request is Timely**

Defendant's argument that Plaintiff's request is untimely, or lacks a procedural basis, is disingenuous. In fact, Defendant himself has sought production of Plaintiff's billing information. (Dkt. 92-26, at 38 n.6.) Defendant thus recognizes that the Court may require the production of documents at this stage of the litigation.

In drafting Rule 54(d)(2), the Advisory Committee specifically contemplated the type of limited production requested by Plaintiff. The Notes to the 1993 Amendment to Rule 54 explained that, "in light of the circumstances of the case," courts may set a schedule for the moving party to disclose "evidentiary material bearing on the fees" including, without limitation, "any fee agreement." Fed. R. Civ. P 54 advisory committee's note (1993). *See also, e.g.*, U.S. Court of International Trade Rule 54 (fee motion must "dis-

close, if the court so orders, the terms of any agreement about fees for the services for which the claim is made"); *Henson v. Columbus Bank & Trust Co.*, 770 F.2d 1566, 1574 (11th Cir. 1985) (district court abused its discretion in failing to compel production of counsel's records when court conceded it did not have enough evidence to adequately set fee). Here, development of the facts sought by Plaintiff can help resolve the dispute concerning whether a fee award is appropriate and, if so, in what amount. Accordingly, the Court should require the requested production.

Notwithstanding Defendant's exhortations, this Court should not wait until after briefing on attorneys' fees is complete to consider this discovery. The information that Defendant chose to leave out of his fee petition is critical. It makes no sense for Plaintiff to obtain it only after it submits its Opposition. That process would cascade into endless requests for further briefing, including sur-replies and sur-sur-replies. Defendant should be required to produce this key information immediately, so that the Court can decide the fee motion with the benefit of an adequate record and an efficient briefing schedule.

3. Defendant's Request for Plaintiff's Billing Records

Defendant has demanded that Plaintiff produce its billing records as a *quid pro quo* for his production. Discovery issues are not always reciprocal, however. Much of the information demanded by Defendant is simply not relevant at this time. *Defendant moved for a fee award, not Plaintiff:* Accordingly, at issue is the propriety and reasonableness of the fees

that Defendant purports to have paid or become obligated to pay.

It is improper for Defendant to withhold its production until he receives what he wants in return. This is true with respect to discovery generally. It is especially true in this instance. Plaintiff needs the requested information for its opposition, which is currently due on September 27, 2013.

It is true that one way in which some courts have considered the reasonableness of certain fees is to look at those of the non-moving party. The former Solicitor General of the United States of America and one of the preeminent law firms in the nation handled this matter at the Supreme Court for Wiley for a total of $300,000 in fees. This amount pales in comparison to Orrick's purported fees of close to $2 million to handle the Supreme Court appeal of this same case. Plaintiff will confirm these figures in its opposition filings. Accordingly, Defendant's request for reciprocal disclosure, even if relevant, is moot.

CONCLUSION

The information reasonably requested by Plaintiff is central to consideration of Defendant's request for a $2 million award that purportedly represents the fees and costs that *he incurred*. The Court should decide such fee motion on the basis of an adequate record, not Defendant's selective recitations. Defendant should be required to produce this billing information within 7 days of the Court's order. Plaintiff's opposition to the fees motion should be due

within 14 days thereafter, with any reply from Defendant due within 14 days of Plaintiff's opposition.

Plaintiff appreciates the Court's consideration, and looks forward to discussing this matter at a conference with the Court and Defendant.

Respectfully submitted,

/s/ Matthew J. Oppenheim
Matthew J. Oppenheim

Cc: Sam P. Israel, P.C. (via ECF and email)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WILEY &
SONS, INC.,

Plaintiff,

Case No. 1:08-cv-07834 (DCP)
[FILED 10/24/13]

v.

SUPAP KIRTSAENG,

Defendant.

DECLARATION OF KERRY M. MUSTICO IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFFENDANT'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Kerry M. Mustico, declare as follows:

1. I am an attorney at the law firm of Oppenheim + Zebrak, LLP, counsel of record for Plaintiff John Wiley & Sons, Inc. ("Wiley") in the above-referenced case. I am a member in good standing of the Bars of New York, Massachusetts, and the District of Columbia. I submit this declaration in support of Plaintiff's Opposition to Defendant's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Declaration of Laura Scileppi in Support of Plaintiff's Motion for a Preliminary Injunction and an Order of Attachment, which was filed in this case as Docket No. 8.

3. Attached hereto as Exhibit 2 is a true and correct copy of *Columbia Pictures Television, Inc. v. Feltner,* No. CV 91-6847 ER, slip op. at 4 (C.D. Cal. June 10, 1999).

4. Attached hereto as Exhibit 3 is a true and correct copy of *L'Anza Research Int'l v. Quality King Distribs.*, No. 98-56258, slip op. (9th Cir. June 15, 1999).

5. Attached hereto as Exhibit 4 is a true and correct copy of the Memorandum of Plaintiff in Support of Its Motion for an Order Directing Defendant to Bring His Personal Property into New York State and Appointing a Receiver to Collect It, which was filed in this case as Docket No. 79.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Reply Memorandum of Plaintiff in Support of Its Motion for an Order Directing Defendant to Bring His Personal Property into New York State and Appointing a Receiver to Collect It, which was filed in this case as Docket No. 83.

7 Attached hereto as Exhibit 6 is a true and correct copy of the Orrick Retention Agreement that Defendant produced to Plaintiff on October 9, 2013.

8. Attached hereto as Exhibit 7 is a true and correct copy of Adam Liptak, *Specialists' Help Can Come With a Catch,* N.Y. Times, Oct. 9, 2010, at Al.

9. Attached hereto as Exhibit 8 is a true and correct copy of Daniel Wilson, *Pro Bono Firm of 2013: Orrick Herrington,* Law360, Sept. 16, 2013, http://www.law360.com/articles/472911/pro-bono-firm-of-2013-orrick-herrington.

10. Attached hereto as Exhibit 9 is a true and correct copy of Marcia Coyle, *Orrick's Big-League Push,* The National Law Journal, Sept. 4, 2013, *available at:* http://www.orrick.com/Events-and-Publications/Pages/Orricks-Big-League-Push.aspx.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Kerry M. Mustico
Kerry M. Mustico

Executed October 24, 2013
In Washington, DC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JON WILEY & SONS, INC.,

Plaintiff,

-against- 08 Civ. 7834 (GEL)

SUPAP KIRTSAENG D/B/A BLUECHRISTINE99 AND JOHN DOE NOS. 1-5,

ECF Case
[FILED 10/24/13]

Defendants.

DECLARATION OF LAURA SCILEPPI IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND AN ORDER OF ATTACHMENT

LAURA SCILEPPI hereby declares pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. I am a member of the bar of this Court and an associate at Dunnegan LLC, attorneys for plaintiff John Wiley & Sons, Inc. ("Wiley") in this action.

2. I am making this declaration in support of Wiley's application for (a) a preliminary injunction restraining defendant Supap Kirtsaeng ("Kirtsaeng") from selling in the United States foreign editions of

Wiley's books printed outside of the United States and imported into the United States without Wiley's permission ("Foreign Editions"), and (b) attaching Kirtsaeng's funds held by PayPal, Inc. ("PayPal"), Bank of America and M&T Bank to maintain the **status quo** and to ensure that those funds may be used to satisfy any judgment that Wiley obtains in this action.

Background

3. Wiley commenced this action on September 8, 2008, alleging that Kirtsaeng had infringed certain of Wiley's copyrighted textbooks by selling Foreign Editions in the United States.

4. Kirtsaeng resides in California and is subject to the personal jurisdiction of this Court under the New York long-arm statute, CPLR § 302(a).

5. When Wiley commenced this action, we had no knowledge of the extent of Kirtsaeng's sales that infringed Wiley's copyrights.

6. Kirtsaeng answered on December 2, 2008, and did not raise the affirmative defense lack of personal jurisdiction. He did not assert any counterclaim.

7 Pursuant to a notice sent to counsel on January 5, 2009, the Court held a pretrial conference on January 21, 2009. At that conference, the Court set a discovery cutoff date of May 22, 2009.

Wiley's Efforts to Obtain Discovery

8. On January 26, 2009, Wiley served a document request calling for Kirtsaeng to produce:

> **"Document Request 2**
>
> Any and all documents that constitute, refer, or relate to the sale, distribution, or transfer of any books, including Foreign Editions."

9. On January 26, 2009, Wiley served an interrogatory on Kirtsaeng asking:

> **"Interrogatory 2**
>
> State the amount of revenue that defendant has received from the sale of Foreign Editions of the textbooks of Wiley."

10. On February 16, 2009, Kirtsaeng responded:

> "Estimated revenue from the sale of Wiley's international edition textbooks is $1,600. This consists of 8 titles, 20 books per title @ $10 per book."

I annex as Exhibit B a copy of Kirtsaeng's response.

11. On March 19, 2009, Kirtsaeng produced, in paper and compressed format, an Excel spreadsheet purporting to disclose his sales of Foreign Editions. However, because of the paper and compressed format, this document was unusable.

12. Wiley then served a subpoena on PayPal on or about March 23, 2009, requesting information concerning Kirtsaeng's sales of Foreign Editions.

13. Despite my requests to his counsel on March 19, 2009, March 26, 2009, April 8, 2009, and April 16, 2009, Kirtsaeng did not produce an electronic copy of this Excel spreadsheet until April 21, 2009. He did so about four hours after I e-mailed his counsel a draft of a joint letter addressed to the Court concerning this matter. This electronic document revealed that Kirtsaeng had sold Foreign Editions beginning in 2008.

PayPal's Disclosure Of Kirtsaeng's Sales And His Transfer Of Over $188,000 From PayPal

14. On April 22, 2009, PayPal responded to Wiley's subpoena by providing its business records on CD-Rom, which are too voluminous to print. I have provided a copy of the CD-Rom to counsel for Kirtsaeng, and will provide a copy to the Court upon request.

15. The documents that PayPal produced on April 22, 2009 demonstrate the following:

- Since March 3, 2005, Kirtsaeng has received $1,199,483.13 from sales on PayPal. A copy of the PayPal record for Kirtsaeng's account showing the "Total Amount Received" is annexed as Exhibit C.

- The vast majority of these sales appear to be Foreign Editions of textbooks of various

publishers, including Wiley. A sampling of Kirtsaeng's PayPal Transaction Log showing the date, subject line, and amount of transactions is annexed as Exhibit D.

- Kirtsaeng has continued selling Foreign Editions. His last sale occurred on April 13, 2009. A print out of the most recent activity in Kirtseang's PayPal Transaction Log is annexed as Exhibit E.

- From the January 5, 2009, when Kirtsaeng's counsel was served with notice of the pretrial conference, until April 6, 2009, Kirtsaeng has withdrawn from one of his PayPal accounts $188,100. Prior to January 5, 2009, Kirtsaeng's last withdrawal was in September of 2008. A summary of all of the withdrawals made from January 5, 2009 to April 6, 2009 is annexed as Exhibit F

- As of April 17, 2009, Kirtsaeng had $93.42 in one of his PayPal accounts. The PayPal record for this account is annexed as Exhibit C.

- Two of Kirtsaeng's PayPal accounts are linked to bank accounts. One is linked to an account at Bank of America and another is linked to an account at M&T Bank. The PayPal record for account linked to Bank of America is annexed as Exhibit C. The PayPal record for the account linked to M&T Bank is annexed as Exhibit G.

- Despite his answer to interrogatory 2 stating that he had sold about 160 of the Foreign Editions of Wiley, the PayPal records demonstrate that Kirtsaeng sold more than 500 of the 8 Foreign Editions that are the subject of the complaint.

16. After receiving these PayPal documents, I checked eBay for sales under the username Billytext. I learned that Kirtsaeng is currently offering to sell, or has recently sold, Foreign Editions of at least four Wiley works.

- Since January of 2009, Kirtsaeng has sold 21 Foreign Editions of the work entitled **Organic Chemistry**, which has received Copyright Registration number TX-2-544-723 on April 19, 1989. Print outs of Kirtsaeng's listings and sales histories are annexed as Exhibit H.

- Kirtsaeng is currently offering a Foreign Edition of the work entitled **Information Technology for Management**, which has received Copyright Registration number TX-6-013-876 on August 20, 2004. A print out of the current eBay listing is annexed as Exhibit I. Since January of 2009, Kirtsaeng sold at least 24 Foreign Editions of this work. Print outs of Kirtsaeng's listings and sales histories are annexed as Exhibit J.

- Since January of 2009, Kirtsaeng has sold at least 6 Foreign Editions of **Cell and Molec-**

ular Biology, which has received Copyright Registration number TX-4-872-740 on October 28, 1998. Print outs of Kirtsaeng's listings and sales histories for these items are annexed as Exhibit K.

- Since January of 2009, Kirtsaeng sold at least 1 Foreign Edition of **Fundamentals of Heat and Mass Transfer**, which has received Copyright Registration number TX-6-410-153 on July 28, 2006. Print outs of Kirtsaeng's listing is no longer available, but feedback showing a sale of this title and is annexed as Exhibit L.

The Present Application

17 Wiley is proceeding by order to show cause, rather than by notice of motion, because of the urgency of the relief it seeks.

18. Wiley has not made this or a similar application to this, or any other, Court.

19. I annex as Exhibit M a proposed form of preliminary injunction and order of attachment.

20. At about 9:30 a.m. this morning, I provided counsel for Kirtsaeng with an e-mail copy of the papers that we are submitting to the Court in support of the present application. I invited him to appear when we intend to present the proposed order to the Court at about _:00 p.m. today.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of April 2009.

/s/ Laura Scileppi
Laura Scileppi

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November 11, 2011

E. Joshua Rosenkranz
(212) 506-5380
jrosenkranz@orrick.com

Via E-Mail and U.S. Mail

Mr. Supap Kirtsaeng
c/o Mr. Sam P Israel, Esq.
Sam P Israel, P.C.
One Liberty Plaza, 23rd Floor
New York, New York 10006
smisrael@aol.com

Re: Representation of Supap Kirtsaeng in *John Wiley & Sons, Inc. v. Supap Kirtsaeng* (2d Cir., August 15, 2011)

Dear Mr. Kirtsaeng:

I understand from speaking with your lawyer, Sam P Israel that you are in favor of continuing your efforts to overturn the trial court's rulings in the case

brought against you by John Wiley & Sons, Inc. and that you approve of our firm working with Mr. Israel in this regard. (Specifically, we would collaborate on an effort to seek a reversal of the court's rulings through a petition for certiorari review made to the United States Supreme Court.) We understand from Mr. Israel that you are not in a position to pay for our services, yet we still need to confirm other non-monetary terms and conditions which will govern the attorney-client relationship.

The purpose of this engagement letter and the attached Standard Terms of Engagement is to confirm those terms and conditions upon which Orrick will be providing its legal services to you in the Matter. We believe that a mutual understanding of these terms and conditions at the outset is fundamental to establishing a good working relationship.

First, allow me to say that we are pleased to welcome you as a client of Orrick, Herrington & Sutcliffe LLP As we have discussed with Sam, we are dismayed by the Second Circuit's ruling in this case and are honored to have the opportunity to try to overturn it. The odds are against us, but we hope justice will prevail.

1. Legal Services

We have agreed to work on your petition for review to the United States Supreme Court and any Supreme Court proceedings that might arise from that petition. Specifically, we anticipate that this matter will involve the following: (1) drafting and fil-

ing a petition for certiorari at the United States Supreme Court; and (2) if the certiorari petition is granted, the preparation and filing of the merits brief before the Supreme Court and oral argument before the Supreme Court. The scope of our representation in this matter may evolve in accordance with our discussions with you and Mr. Israel; in the event of such changes, the terms of this letter will apply to these services, as well. Throughout, we look forward to working closely with Mr. Israel in all important submissions and decisions. As a condition of our handling the case for free, he and you both agree that if the Supreme Court does grant certiorari in this case, we will argue the case on your behalf.

This engagement would not encompass providing you with legal assistance with any matters other than the Second Circuit's denial of your appeal.

Also, we represent you, and not any other organization, relative, or entity that you may be affiliated with. Accordingly, we will be representing your interests, not the interests of any other. As indicated above, we will be co-counseling with Mr. Sam Israel.

2. Persons Responsible

Within our firm, I will be primarily responsible for this representation, with assistance from Annette L. Hurst and Alex J. Feerst. Our direct dial numbers are as follows:

E. Joshua Rosenkranz: (212) 506-5380

Annette L. Hurst: (415) 773-4585

Alex J. Feerst: (650) 614-7613

There may be occasions when your interests would best be served by involving other attorneys or paralegals within our firm, and we will advise you of such staffing assignments at the appropriate time.

Please let me know promptly if any questions arise about the services provided to you by our firm.

3. Fees and Charges

In accordance with our *pro bono* representation, we have agreed to provide our legal services to you without charge (subject to the condition noted above). We have agreed to pay all out-of-pocket expenses related to this representation.

4. Roles of Attorney and Client

Our responsibilities under this agreement are to provide legal counsel and assistance to you in accordance with this letter. As your legal counsel, all communications between us shall remain confidential unless you direct otherwise.

During the course of this engagement, we may express opinions or beliefs to you about the effectiveness of various courses of action or about the results that might be anticipated. Such statements are expressions of opinion only and should not be construed as promises or guarantees.

You have the right to terminate our representation at any time. We have the right to withdraw

from this engagement at any time with your consent, and at any time without your consent provided withdrawal can be accomplished without material adverse effect on your interests. In addition, we may withdraw without your consent if it becomes legally or ethically proper for us to do so under the applicable rules of professional responsibility.

You agree to cooperate fully with us, will promptly notify us of any changes in address, telephone number, income, or employment. You will maintain regular contact with us as is necessary for the conduct of this representation. You have been advised that you have the following rights regarding your representation by the firm: to be kept informed about important developments; to be consulted through co-counsel before any important decision is made on your behalf, and to be given enough information through co-counsel to make an informed decision; to be consulted through co-counsel and to agree to any settlement of your matter before it is settled on your behalf by any attorney at the firm; and to obtain a copy through co-counsel of the statement of client's rights and responsibilities.

When we close your file, all original documents that were furnished by you will be returned. We will maintain the file for no less than three years from the date of closing, after which it may be destroyed.

If this letter meets with your approval, and you understand its contents, please sign and return the enclosed copy. The effective date of our agreement to provide services to you is the date on which we first performed services.

We look forward to working with you.

Very truly yours,
/s/ E. Joshua Rosenkranz
E. Joshua Rosenkranz

Cc: Annette L. Hurst
Alex J. Feerst
Pro Bono Counsel
Sam P Israel

Attachment

STANDARD TERMS OF ENGAGEMENT

Except as modified in writing by the accompanying engagement letter or in another agreement signed by the Client and Orrick, the following provisions shall apply to the relationship between Orrick and the Client.

1. Client

Our engagement is only on behalf of the person(s) or entity(s) identified in the engagement letter accompanying these Standard Terms of Engagement. Our representation of the Client does not encompass any other person or entity affiliated with the Client.

2. Scope of Engagement

The scope of Orrick's representation of the Client is limited to the specific matters identified in the accompanying engagement letter, and such additional matters as the Client and Orrick may in their mutual discretion agree to from time to time. In each case, Orrick's agreement to any expansion of the scope of its representation of the Client will be subject, among other things, to such additional conflict checks, waivers, retainers, approvals and other arrangements as Orrick may in its professional judgment deem necessary or appropriate in the circumstances. Except as otherwise expressly provided in any written engagement letter (or a written amendment of a prior engagement letter) between Orrick and Client entered into in connection with such expansion of the scope of Orrick's representation, the

agreement reflected in these Standard Terms of Engagement, and in the accompanying engagement letter, applies to Orrick's current representation of the Client and to any subsequent matters that Orrick agrees to undertake on the Client's behalf.

3. **Waiver of Future Conflicts of Interest**

Our agreement to represent the Client is conditioned upon the understanding that we are free to represent any clients (including the Client's adversaries) and to take positions adverse to either the Client or an affiliate in any matters (whether involving the same substantive area(s) of law for which the Client have retained us or some other unrelated area(s), and whether involving business transactions, counseling, litigation or otherwise), which do not involve the same factual and legal issues as matters for which the Client has retained us or may hereafter retain us. In this connection, the Client should be aware that we provide services on a wide variety of legal subjects to a large number of clients both in the United States and internationally. (A summary of Orrick's current practice areas and the industries in which we represent clients can be found on Orrick's web site at www.orrick.com.) We will, of course, hold in confidence the Client's secrets and confidences. Similarly, the Client understands that while Orrick may obtain confidential information from other clients that may be of interest to the Client, Orrick cannot share such information with the Client. The Client agrees that it will not seek to disqualify Orrick from any such present or future representations, and

waives any actual or potential conflict that might arise from such current or future representations so long as those other representations do not involve the same factual and legal issues as a currently active engagement for the Client or the Orrick attorneys working on such engagements. The Client may wish to consult with other counsel about the consequences of this waiver.

4. **Internal Communications**

The occasion might arise for us, at our own expense, to consult regarding our engagement for the Client with our own counsel (e.g., our Chief Legal Officer, other firm lawyers working with our Chief Legal Officer who do not perform work for the Client on the Matter, or our own outside counsel). To the extent that we are addressing our own rights or responsibilities, a conflict of interest might be deemed to exist between Orrick and the Client as to such consultation or resulting communications, particularly if a dispute were ever to arise between Orrick and the Client regarding the Matter. A condition of this engagement is that the Client hereby consents to such consultation occurring, and waives any claim of conflict of interest based on such consultation or resulting communications that could otherwise disqualify us from continuing to represent the Client or from acting in our own behalf, even if such consultation or communications might be deemed adverse to the interests of the Client. The Client acknowledges and agrees that any such consulting and communications are protected by our own attorney-client privilege from disclosure to the Client.

5. **Responsibilities of Attorney and Client**

We will provide to the Client legal counsel and assistance in accordance with the accompanying engagement letter. The Client will not look to or rely upon Orrick for any investment, accounting, financial or other non-legal advice, including without limitation any advice regarding the character or credit of any person with whom the Client may be dealing. Although we will at times communicate with the Client by e-mail, letter, or other written form, we may provide much of our counsel and assistance in telephone conversations and meetings with the Client. If the Client ever wishes for us to confirm any oral advice in writing, please let us know.

For us to represent the Client effectively, we need the Client to provide us with complete and candid information regarding the subject matter of the matter, to keep us informed of relevant developments, to make decisions necessary for us to fulfill our responsibilities in the matter and otherwise to provide to us the Client's reasonable assistance and cooperation.

During the course of this engagement, we may express opinions or beliefs to the Client about the effectiveness of various courses of action or about the results that might be anticipated. Such statements are expressions of opinion only, and should not be construed as promises or guarantees.

We have a duty of confidentiality to the Client and each of our other clients. We take this duty very

seriously and, except to the extent permitted by the applicable rules of professional conduct, we will not disclose any confidential information of the Client to any other client or person. Similarly, we cannot disclose to the Client the confidences of any other client even when such information relates to matters that might affect the Client.

6. **Termination**

The Client may terminate this representation at any time, with or without cause, but in the case of litigation, court approval may be necessary Subject to the application of the applicable rules of professional responsibility, Orrick also reserves the right to withdraw, if among other things, the Client fails to cooperate or follow Orrick's advice on a material matter, or any fact or circumstance arises that, in Orrick's view, renders our continuing representation unlawful or unethical, or we otherwise have the right to withdraw pursuant to applicable rules of professional responsibility Any termination of our representation of the Client would be subject to such approval as may be required from any court(s) in which we are appearing on the Client's behalf.

7. **Date of Termination**

Orrick's representation of the Client will be considered terminated at the earliest of (i) the Client's termination of the representation, (ii) Orrick's withdrawal from the representation, or (iii) the substantial completion of Orrick's substantive work for the Client.

8. File Retention and Disposition

Once our engagement in this Matter ends, we will send you a written notice advising you that this engagement has concluded. You may thereafter direct us to return, retain or discard some or all of the documents pertaining to the engagement. Orrick may charge the Client for the reasonable costs of retrieval, assembly, copying, storage and transfer of all files or materials in any format. If Orrick determines it appropriate to dispose of materials relating to the Matter, Orrick will provide you written notice of that determination. If you do not respond to the notice within sixty (60) days, you agree and understand that any materials left with us after the engagement ends may be retained or destroyed at our discretion without further notice to you and in a manner which preserves the confidential and secret nature of their contents. If you have a Records Retention Policy in place with which outside counsel will need to comply, please advise us so that we may so inform our Records Department.

Notwithstanding the foregoing, and unless you instruct us otherwise, we will return and/or preserve any original documents provided to us by the Client, and any documents we know or believe you will need to retain to enforce your rights or to bring or defend claims. You should understand that "materials" include paper files as well as information in other mediums of storage including voicemail, email, printer files, copier files, facsimiles, dictation recordings, video files, and other formats. We reserve the right to make, at our expense, certain copies of all documents

generated or received by us in the course of our representation. When you request copies of documents from us, copies that we generate will be made at your expense. We will maintain the confidentiality of all documents throughout this process.

Our own files pertaining to the Matter will be retained by the firm (as opposed to being sent to you) or destroyed. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and account records. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us within a reasonable time after the termination of the engagement.

9. Arbitration

Although we think it is unlikely, a dispute could arise between us regarding some aspect of the engagement and Orrick's representation of the Client. Any such dispute, whether a claim by the Client against Orrick or by Orrick against the Client, including claims for unpaid fees and charges, negligence, quality of services, breach of contract or fiduciary duty. fraud or any other claims relating to any aspect of the engagement and our representation of the Client is referred to herein as a "Dispute" If we are not able to resolve a Dispute among ourselves, the Client and Orrick agree to resolve such dispute through confidential binding arbitration.

10. Binding Agreement

The engagement letter and these Standard Terms of Engagement represent the entire understanding and agreement between the Client and Orrick with respect to the subject matter referred to herein. By signing below, the Client acknowledges that the engagement letter and these Standard Terms of Engagement have been carefully reviewed and their content understood and that the Client agrees to be bound by all of the terms and conditions. Furthermore, the Client acknowledges that Orrick has made no representations or guarantees to the Client regarding the outcome of the Matter or the time necessary to complete the Matter. The provisions of this letter may only be amended in writing and signed by both parties.

11. Acceptance of Engagement Terms

By signing below, you acknowledge and represent that you have read the engagement letter and these Standard Terms of Engagement, that you understand and agree to the terms and provisions, and that you are authorized to do so on behalf of the Client.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ E. Joshua Rosenkranz
E. Joshua Rosenkranz
Partner

Dated: November 11, 2011

SUPAP KIRTSAENG

By: /s/ Supap Kirtsaeng
Supap Kirtsaeng

Dated: _____, 2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WILEY & SONS, INC.,

Plaintiff,

Case No. 1:08-cv-07834 (DCP) [FILED 10/24/13]

v.

SUPAP KIRTSAENG,

Defendant.

DECLARATION OF SUSAN TIEDEMANN SEUTTER IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Susan Tiedemann Seutter, declare as follows:

1. I am an attorney at the law firm of Oppenheim + Zebrak, LLP, counsel of record for Plaintiff John Wiley & Sons, Inc. ("Wiley") in the above-referenced case. I am a member in good standing of the Bars of Maryland, New Jersey, and the District of Columbia. I submit this declaration in support of Plaintiff's Opposition to Defendant's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

2. I have reviewed the Declarations of E. Joshua Rosenkranz and Sam P Israel in support of Kirtsaeng's Motion under 17 U.S.C. § 505. I have also reviewed Exhibit J to Rosenkranz's Declaration and Exhibit 12 to Israel's Declaration, which are statements of services rendered by the law firms of Orrick, Herrington & Sutcliffe, LLP ("Orrick") and Sam P Israel, P.C. ("Israel") to Mr. Kirtsaeng in this matter (the "Fee Statements"). In addition, I have reviewed Exhibit K to Rosenkranz's Declaration which lists Orrick's disbursements ("Orrick Disbursements").

I. Orrick's Billing Rates

3. In his declaration, Rosenkranz includes Orrick's various billing rates that Kirtsaeng seeks in his motion for a fee award. Those rates range from $785 to 1020 per hour for Orrick partners and $330 to 615 per hour for Orrick associates. Kirtsaeng also seeks fees for an Orrick paralegal at $250 per hour.

4. Rosenkranz states that the billing rates for the Orrick partners who worked on Kirtsaeng's Supreme Court appeal are well within the range of reasonable partner rates for large law firms in New York City. Rosenkranz does not provide any evidence outside the *ipse dixit* of his declaration that the partner billing rates included therein are what Orrick customarily charges and is paid by Orrick's clients.

5. I reviewed the case law cited in Kirtsaeng's brief on pages 27, 28, and 30. Those cases award fees in intellectual property cases in amounts ranging from $400 to $650 per hour for law firm partners in

the Southern District of New York. *See* Br. 27-28 (citing *Entral Group v. Sun Sports Bar, Nat'l Ass'n for the Specialty Food Trade v. Construct Data Verlag, Yurman Designs v. PAJ*, and *GAKM Res. v. Jaylyn Sales).* None of the cases award fees up to $615 per hour an associate. *See* Br. 30 (citing *AMA Prop. v. Indiabulls Fin. Servs., In re Merrill Lynch & Co. Research Reports Sec. Litig.).*

6. Rosenkranz attaches the National Law Journal's 2012 Billing Survey ("Billing Survey") to support the billing rates sought in Kirtsaeng's motion. I reviewed the Billing Survey. Of the 55 firms in the Billing Survey that provided their billing rates, of which Orrick was not one, only 4 listed their highest partner rate at above $1000 per hour. Every single firm listed their median hourly partner rate below $1000, with the highest being $775 per hour. The Billing Survey also makes the point that the "uptick" in law firm rates is driven by a "car dealership sticker price' phenomenon" in which "law firms are upping their asking price to gain room to haggle."

II. Orrick and Israel's Vague Fees

7 Based on my review of the Orrick and Israel Fee Statements, I calculated the fees attributable to certain categories of work as described below

8. In the first category, "Vague Fees," I attempted to identify those fees for work billed where the vagueness of the time entries prevents Plaintiff and the Court from determining the reasonableness of the work performed or the time expended. There

are numerous "vague entries" that do not provide information which would indicate how the activity may have advanced the litigation or at least the general subject matter of the time expenditures. *(See, e.g.,* Israel Fee Statement p. 3 (1/15/09: 0.4 hours "emails, tel. conf. w/ othrer side., emails." [sic]); *id.* p. 24 (12/3/09: 4.3 hours " ... , other matters, etc."); p. 29 (2/10/10: 2.4 hours "research motion, eamils [sic]"); Orrick Fee Statement p. 7 (11/21/11: 11.0 hours "Review briefs and petitions."); p. 8 (11/28/11: 1.2 hours "Coordinate logistics and conversation re legal strategy."); *id.* p. 28 (7/9/12: 1.5 hours "Conversation with associate; telephone conference with Goodwill.")). The total amount of these entries is $153,196.50 for Orrick and $51,187.50 for Israel.[1]

9. These amounts are under-inclusive, as there are also many vague entries within the amici category, *see* infra Section III, which have not been added to the total here in order to account for each time entry only once. The majority of the vague entries also fall under the category of block billing, but in order to avoid overlap, I have not included these vague entries in the block billing totals, *see* infra paragraph 13.

10. Additionally, $6,630 of the total amount of the vague entries includes time spent on "press," which is not defined or elaborated upon. *(See* Orrick

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[1] Israel did not provide totals for his attorney's fees and disbursements, but rather left it for Plaintiff and/or the Court to tally. In addition to vague and block billing issues, the Israel Fee Statement lacks the information necessary to comprehend the confusing credits, balances, and adjustments. *(See, e.g.,* Israel Fee Statement p. 23).

Fee Statement p. 36 (10/24/12: 6.5 hours "Prepare for Oral Argument; press re case.")).

11. I conducted this review because courts may reduce or disallow fees requested where the requested fees concern billing entries that are vague and do not sufficiently demonstrate what counsel did. *Ritchie v. Gano*, 756 F. Supp. 2d 581, 583 (S.D.N.Y. 2010); *Ryan*, 882 F. Supp. 2d at 636-37; *Thai-Lao Lignite (Thail.) Co. v. Gov't of the Lao People's Democratic Republic*, No. 10 Civ. 05256 (KMW), 2012 U.S. Dist. LEXIS 164261, at *31-32 (S.D.N.Y Nov. 14, 2012).

III. Orrick and Israel Block-Billed Fees

12. There are numerous "block entries" that include two or more separate tasks and just one overall time allocation. Where this occurs, it is impossible to know how much time Israel or an Orrick attorney spent on any task. *(See, e.g.*, Israel Fee Statement p. 11 (5/6/09: 7.9 hours "many calls to supap, revise papers, drafting opp to motion include multiple docs, research, service, deliver to court., etc., filing, tel. conf. opp counsel, revising stipulation."); *id.* p. 18 (9/16/2009: 4.9 hours "emails other side, drafting memo; doing depo notice, etc."); Orrick Fee Statement p. 8 (11/29/11: 17.6 hours "Meetings with J. Rosenkranz to discuss cert petition, review draft of cert petition by A. Hurst, reformat document, research merits issues, revise cert petition, and incorporate edits re: Wiley v. Kirtsaeng."); *id.* p. 13 (4/24/12: 12.5 hours "Meeting to discuss merits brief; revise outline of merits brief; review Costco briefs")). The total amount of the block-billed entries is $565,304.50 for Orrick and $31,380.50 for Israel.

13. As noted above and below, see *supra* paragraph 9 and *infra* paragraph 20, these amounts are under-inclusive as there are time entries in the vague and amici categories that also contain block billing but which are not included here in order to avoid overlap.

14. Of further note, $8,058 of the total block-billed amounts is for an entry that includes time spent on "press calls" (at $1020 per hour). (*See* Orrick Fee Statement p. 37 (10/26/12: 7.9 hours "Prepare for and attend moot court and debrief; press calls.")).

15. I conducted this review because courts may reduce fees where counsel engage in "block billing" whereby they combine more than one task within a single entry. without breaking out the hours spent on each individual task. *Mawere v. Citco Fund Servs., (USA) Inc.*, No. 09 Civ. 1342 (BSJ), 2011 U.S. Dist. LEXIS 149111, at *29-33 (S.D.N.Y. Sept. 16, 2011); *Lao Lignite*, 2012 U.S. Dist. LEXIS 164261, at *32-35.

Section III—Orrick Fees for Amici-Related Time

16. The majority of the fees Orrick seeks involve time spent over the course of a year researching, recruiting, managing, and coordinating amici involvement. Orrick actively sought and worked with amici as early as the petition-for-certiorari stage. *(See, e.g.*, Rosenkranz Decl. ¶ 30 ("This [amicus] process was so time-consuming that it required dedicated attention separate and apart from preparing the cert petition."); *id.* at ¶ 31 (stating that "the coordination grew exponentially as the number of amici got larger and

larger" and then listing thirteen amici participants); Orrick Fee Statement p. 5 (11/10/11: 9.25 hours "Drafting, sending, and responding to emails to gather amicus support re: Wiley v. Kirtsaeng; reviewing prior emails and memos between J Rosenkranz, A. Feerst, and A. Hurst; telephone conference with J. Mitchell re: amicus brief and conducting follow-up research (reading relevant opinions and briefs) and memorializing conversation with J. Mitchell regarding same; telephone conversation with A. Feerst; reviewing USSC rules and drafting shell petition.")).

17. Orrick then "start[ed] the amicus process over again, launching a new and expanded effort, and coordinat[ed] with existing and new amici as they, too, fine-tuned their approach to the merits stage." (Rosenkranz Decl. ¶ 37 (listing 86 amici with whom Orrick coordinated); *see also* Orrick Fee Statement p. 5 (11/9/11: 4.75 hours "Research potential amici and assemble chart in regard to same; telephone conversation with A. Feerst."); *id.* p. 15 (5/4/12: 8.2 hours "Amicus outreach: provide list of amici to Intel; prepare email for J Rosenkranz to circulate; confer with J Rosenkranz re: extension; conversation with Scott Martin about extension; draft extension letter; discussions with M Gottlieb and N Lenning re: amicus outreach; revise statement of facts.")).

18. The total amount of these entries for amici-related time is $531,085.25. This total amount also includes fees that qualify for the block-billed and/or vague categories, but they were not calculated as such in order to avoid any overlap.

19. The amici category includes $11,652 in entries that contain time spent on "media strategy" and "press coverage." *(See, e.g.,* Orrick Fee Statement p. 12 (4/16/12: 1.3 hours "Conversation with J Rosenkranz re: cert grant; discussions with amici; review rules re: merits brief due date; review press coverage."); *id.* p. 18 (5/22/12: 4.3 hours "Research limitations on 106 rights and draft explanations for brief; discuss merits and amicus briefing with M. Shapiro; attend meeting with counsel for eBay concerning amicus briefing and media strategy."); (5/22/12: 9.60 hours "Conversation with Mark Wilson re: patent brief; call with eBay re: brief strategy, media approach, and amici ..."); *id.* p. 19 (5/29/12: 1.7 hours "Revise merits brief; discuss amicus and media strategy with counsel for eBay.")).

20. Israel also bills for time related to amici involvement. However, there are very few such entries, and those entries already fall within the vague and/or block-billed categories. Accordingly, we do not include them in the amici category. *(See, e.g.,* Israel Fee Statement p. 31 (3/8/10: 1.7 hours "review amiscus [sic] motion tel conf. w/ amicus- john, cont. prep reply brief and review new amicus.")).

IV Section IV—Totals from Sections I, II, and III

21. If the above categories of fees set forth in Sections I through III are excluded from Kirtsaeng's fee petition, only $634,670.75 of Orrick's fees, and $22,886.50 of Israel's fees, remain to be reviewed for reasonableness.

22. Even then, a review remains difficult because other issues still plague the fee entries, as shown by the following examples which are not exhaustive:

i. There are entries with potentially excessive hours requiring further scrutiny (*See, e.g.*, Orrick Fee Statement p. 19 (5/26/12: 15.3 hours "Edit brief."); *id.* p. 21 (6/2/12: 15.0 hours "Edit Supreme Court brief.")). These two examples cited were from Rosenkranz's time entries, which are at the highest billing rate of Orrick's fee earners.

ii. There are entries where attorneys bill their full rates for clerical tasks. (See, e.g., Orrick Fee Statement p. 12 (3/21/12: 1.7 hours "Coordination with printers to ensure delivery of briefs to Supreme Court."); *id.* p. 29 (7/26/12: 4.1 hours "Organize files for B Ginsberg; oral argument preparation.")).

iii. There are entries with potentially duplicative or otherwise unnecessary work. For instance, Orrick bills the time for five Orrick attorneys and one Orrick paralegal to attend moot courts and the oral argument with Rosenkranz for a total of $72,894.50.[2] (Orrick Fee Statement pp. 36-37).

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[2] Due to the block billing nature of some of the time entries used to arrive at this amount, this number encompasses other tasks

iv. Five Orrick attorneys had fee entries, totaling $137,226, which included time for researching and/or reviewing the legislative history of the Copyright Act. Associate Feerst billed the bulk of this amount, 211 hours at a total of $88,686. Thus, his entries for such research were potentially excessive and/or duplicative. *(See, e.g.*, Orrick Fee Statement p. 15 (5/3/12: 2.4 hours "Research legislative history of the Copyright Act."); *id.* p. 34 (10/5/12: 2.7 hours "Research legislative history and patent exhaustion."); *id.* p. 37 (10/27/12: 5.4 hours "Research legislative history and case law concerning first sale doctrine in preparation for oral argument.")).

V. Section V—Costs

23. In Exhibit K to the Rosenkranz Declaration, hereinafter "Orrick Disbursements," Orrick seeks $40,412.54 in costs. Orrick Disbursements p. 2. However, like the Fee Statements, the Disbursements are fraught with issues. I identified the following examples of disbursements, which are indicative, but not exhaustive, of the problems with the costs Defendant seeks:

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as well, such as preparing for these events. Without more information, we are unable to parse out the exact amount billed for time spent solely in attending the moot courts and oral argument.

i. Disbursements for the firm's non-recoverable, routine office overhead. *(See, e.g.*, Orrick Disbursements pp. 2, 12-15 (totaling $7,377.09 for word processing)).

ii. Disbursements for five Orrick attorneys, one Orrick paralegal, Israel, and someone named "El" who accompanied Israel to attend the oral argument with Rosenkranz. (Orrick Fee Statement p. 37; Israel Fee Statement p. 42). Orrick seeks travel expenses for attorneys, other than Rosenkranz, who attended moot courts and the Supreme Court oral argument. (*See* Rosenkranz Decl. ¶ 43; Orrick Disbursements p. 8 (showing $392.78 in taxi expenses for Simpson and Feerst; *id.* pp. 11-12 (showing $4,429.60 in airfare and travel expenses for Hurst, Feerst, and Simpson); Israel Fee Statement p. 42 (showing $2,500 in hotel and travel expenses for "Sam & El")). Presumably, "El" refers to Israel associate Eleonora Zlotnikova.

iii. Disbursements for $12,882.59 in Lexis and Westlaw disbursements. (Orrick Disbursements p. 2). However, many of these legal research entries fail to correspond to Orrick's Fee Statement in a number of ways:

(1) Orrick did not submit any time entries for Chris Carpenter, Gabriel Ramsey, Heather Horter,

and Michael Steven Timpani. (Orrick Fee Statement p. 2). However, $574 in Lexis disbursements, and $1,174.80 in Westlaw disbursements, appear in their names. (Orrick Disbursements pp. 5, 12).

(2) The second largest Lexis disbursement is for research Nicholas F. Lenning purportedly conducted on September 18, 2012. (Orrick Disbursements p. 5 ($2,162)). However, Orrick did not submit any time entries for Mr. Lenning on or around that date. (Orrick Fee Statement p. 33).

(3) The largest Lexis disbursement is for research Brian D. Ginsberg purportedly conducted on October 21, 2012. (Orrick Disbursements p. 5 ($2,356)). However, the only time entry Orrick submitted for Mr. Ginsberg on that date covers only four hours of work, none of which he details as research. (Orrick Fee Statement p. 36 (10/21/12: 4.0 hours "Oral argument preparation; correspondence concerning the same.")). There is only one other time entry by any attorney on that date, also not for research. (Orrick Fee

Statement p. 36 (10/21/12): 8.2 hours "Address issues related to oral argument; read all amicus briefs to prepare for internal moot court")).

iv. Disbursements for $200 for a bar admission to the U.S. Supreme Court. The disbursement entry lists Orrick attorney Tamara W Grosko, who is not a Fee Statement timekeeper, and it is unclear for whom she was obtaining admission. (Orrick Disbursement p. 7).

v. Disbursements for telephone charges that merely list "FIRM" in the timekeeper name column (Orrick Disbursements pp. 8-11). Except for the few entries that list familiar, Fee Statement timekeepers Joshua Rosenkranz, Nicholas F. Lenning, and Lisa T. Simpson, there is no way to determine whether or how these entries relate to work performed on this case.

vi. Disbursements for $1,707.80 for out-of-town meals[3] and $19.88 for overtime

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[3] These meals are listed in relation to the trip several Orrick attorneys took to Washington, DC to attend a moot court at Georgetown and the oral argument at the Supreme Court. *See* paragraph 16. ii. supra, regarding the fact that the only appropriate disbursements to consider are those pertaining solely to Rosenkranz, and not to the other attorneys who merely audited.

meals. (Orrick Disbursements pp. 2, 6-7).

vii. Disbursements for $1,460.86 in taxi charges. (Orrick Disbursements pp. 2, 7-8). Outside of taxis for the multiple Orrick attorneys who traveled to Washington, D.C. for the moot courts and Supreme Court oral argument, the majority of the remaining entries appear to represent Marc Shapiro's use of taxis. (*Id.* pp. 7-8 (eleven entries for $90.96 each, double entries on the same date appear to indicate either improper duplicative billing and/or charges for taxis *to and from* work)).

viii. Disbursements for document reproduction that lack information as to what was copied. (Orrick Disbursements pp. 3-4 (totaling $1,005.40)).

ix. Disbursements for express delivery that lack information as to what was delivered or why express delivery was necessary. (Orrick Disbursements pp. 2, 4).

x. Disbursement for costs that lack the information necessary to determine whether and how the expenditure relates to the case. (See, e.g., Orrick Disbursements p. 6 (5/7/12: $177.19 for the New York City Bar Association)).

xi. Disbursements for deliveries by hand that lack information as to what was delivered or why hand delivery was necessary. (Orrick Disbursements pp. 2, 5).

24. If helpful to the Court, Plaintiff will submit an annotated copy of the Orrick and Israel Fee Statements highlighting the billing entries attributable to each of these categories.

25. Finally, I want to clarify that the process I applied in my review of the fee statements is not an exact science. Data analysis, of course, is only as accurate as the data itself. As I reviewed the entries and separated them into these various categories, I needed to work with entries that in many instances are not clear. There can also be overlap of what issues there are with particular entries. In making these calculations, however, no fee entry was allocated to more than one category.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Susan Tiedemann Seutter
Susan Tiedemann Seutter

Executed October 24, 2013
in Washington, DC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

John Wiley & Sons, Inc.

Plaintiff,

v.

Supap Kirtsaeng

Defendant.

Civil Action No. 08-cv-7834-DCP

[FILED 11/20/13]

REPLY DECLARATION OF E. JOSHUA ROSENKRANZ IN SUPPORT OF DEFENDANT SUPAP KIRTSAENG'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

DECLARATION OF E. JOSHUA ROSENKRANZ

I, E. Joshua Rosenkranz, declare as follows:

1. I am a member of the bar of the State of New York and the firm Orrick, Herrington & Sutcliffe, LLP ("Orrick"), counsel to defendant Supap Kirtsaeng ("Mr. Kirtsaeng") in this action. I submit this declaration in further support of Mr. Kirtsaeng's Motion For Award of Attorneys' Fees and "Full Costs" Under § 505 of the Copyright Act.

STATEMENT

2. Orrick was retained to represent Mr. Kirtsaeng at the Supreme Court level after the Second Circuit denied Mr. Kirtsaeng's appeal, and denied his request for hearing en banc. Orrick agreed to represent Mr. Kirtsaeng pro bono as we understood that Mr. Kirtsaeng was unable to make any further payments for his legal representation. At the time Orrick was retained, we fully intended to seek legal fees pursuant to the Copyright Act if we were to prevail at the Supreme Court level. Attached as Exhibit A is a true and correct copy of the October 8, 2013 letter from E. Joshua Rosenkranz to Sam P Israel, which I understand was requested by counsel for Wiley and provided to them on October 10, 2013.

3. I have been an appellate litigator for over twenty years and regularly handle matters in the Supreme Court of the United States. I have filed briefs in more than 60 Supreme Court cases and have presented oral argument in the Court eight times in the past eight years. I have personally argued more than

170 appeals in state and federal appellate courts across the nation and have served as attorney of record in some 1,500 other appeals.

4. I have led several appeals this year alone where the fees exceed $2 million. In my experience, fees in large complex cases typically exceed $1 million.

5. The billing records submitted by Orrick are sufficiently detailed to allow the Court to determine the nature of the work performed. Each entry contains all required information: the name of the attorney along with the date, time, and nature of the work performed. While it is unclear which specific entries Wiley complains of, the following examples clearly show that there is sufficient information in Orrick's time entries to determine the nature of the work performed (these entries are included in Exhibit J to the July 31, 2013 Declaration of E. Joshua Rosenkranz). Each describes in detail the tasks performed:

- ID No. 18281045: November 14, 2011, Feerst, Alex Jonathan, 8.5 hours billed, description "Draft argument section of cert petition; review Costco cert petition and amicus briefs; review legislative history of Copyright Act manufacturing clause; discuss possible amicus brief with Ms. McSherry of EFF."

- ID No. 18349127: November 30, 2011, Feerst, Alex Jonathan,- 8.80 hours billed, description "Revise cert petition;

research legislative history; check petitioner's appendix and case citations; attend meeting to discuss merits arguments with J. Rosenkranz, A. Hurst, L. Simpson, G. Ramsey, and M. Shapiro."

- ID No. 19228769: June 19, 2012, Shapiro, Marc. R., 10,10 hours billed, description "Calls with eBay, Marvin Ammori, Krista Cox re: amicus brief and strategies; calls with N. Lenning re: same; conversation with J. Rosenkranz re: amicus briefs; coordination with J. Greenfield re: appendix; discussion with A. Feerst re: manufacturing clause and DMCA take down notices; research on DMCA take down notices; revise brief to incorporate DMCA point."

- ID No. 19526864: August 27, 2012, Lenning, Nicholas F., 9.00 hours billed, description "Draft and edit reply brief; review merits and amicus brief from *Costco v. Omega*; review legislative history of § 602(a) for use in argument re purpose of 602(a)."

- ID No. 19646528: September 6, 2012, Feerst, Alex Jonathan, 4.40 hours billed, description "Conduct legal research on international intellectual property exhaustion policy; draft discussion of international exhaustion policy norms; discuss retroactive application of Copyright Act with B. Ginsberg."

- ID No. 19581068: September 9, 2012, Lenning Nicholas F., 8.90 hours billed, description "Review amicus briefs filed in support of Respondent; draft a comprehensive digest of amici arguments and noteworthy passages; review and edit the draft of Section Four of the reply brief."

- ID No 19795796: October 25, 2012, Hurst, Annette, 8.80 hours billed, description "Discussions regarding statutory interpretation issues and research regarding AHRA issue; review emails from amici counsel regarding various issues and responses; attend Georgetown moot court; de-brief re moot court; continuing assistance re argument preparation."

6. Attached hereto as Exhibit B is a true and correct copy of the October 1, 2013 agreement between Orrick, Sam P Israel, and Mr. Kirtsaeng.

7 Attached hereto as Exhibit C is a true and correct copy of the official transcript of the October 29, 2013 oral argument before the United States Supreme Court in *Kirtsaeng v. John Wiley & Sons, Inc.*, No. 11-697

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of November, 2013, at New York, New York.

/s/ E. Joshua Rosenkranz
E. Joshua Rosenkranz

ORRICK, HERRINGTON & SUTCLIFFE LLP
51 WEST 52ND STREET
NEW YORK, NEW YORK 10019-6142

tel +1-212-506-5000
fax +1-212-506-5151

WWW.ORRICK.COM

October 8, 2013

E. Joshua Rosenkranz
(212) 506-5380
jrosenkranz@orrick.com

VIA E-MAIL

Samuel P Israel
Samuel P Israel, P.C.
1 Liberty Plaza
Twenty Third Floor
New York, New York 10006

Re: John Wiley & Sons, Inc. v. Supap Kirtsaeng, No. 08-cv-7834

Dear Mr. Israel:

In response to the Court's request, made at the hearing held September 26, 2013, please receive this letter as confirmation that Orrick, Herrington & Sutcliffe LLP ("Orrick"), Supreme Court counsel for Supap Kirtsaeng, was retained to represent Mr. Kirtsaeng pro bono at the Supreme Court level, as set forth in our retainer agreement (which we understand is being produced).

As we understood that Mr. Kirtsaeng was unable to make any further payments for his legal representation, we did not provide him with any invoices. We did, however, keep detailed records of our work and time, as we fully intended to seek legal fees pursuant to the Copyright Act if we were to prevail at the Supreme Court level. We submitted full and complete time records of our work on this matter, detailing all hours spent by attorneys and paralegals and all disbursements, in connection with the July 31, 2013 Motion for Attorneys' Fees at Exhibits J and K to the Rosenkranz Declaration.

Orrick received no payments from Mr. Kirtsaeng or any other person or entity for its work on this matter.

Very truly yours,

/s/ E. Joshua Rosenkranz
E. Joshua Rosenkranz

ORRICK, HERRINGTON &
SUTCLIFFE LLP
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WWW.ORRICK.COM

[FILED 11/20/13]

October 1, 2013

E. Joshua Rosenkranz
(212) 506-5380
jrosenkranz@orrick.com

VIA E-MAIL

Mr. Supap Kirtsaeng
c/o Mr. Sam P Israel, Esq.
Sam P Israel, P.C.
One Liberty Plaza, 23rd Floor
New York, New York 10006
smisrael@aol.com

Re: Representation of Supap Kirtsaeng in *John Wiley & Sons, Inc. v. Supap Kirtsaeng*

Dear Mr. Kirtsaeng:

I write on behalf of Orrick, Herrington & Sutcliffe LLP ("Orrick") and Sam P Israel, P.C. As you aware, following your success at the U.S. Supreme

Court, the Copyright Act permits you, as the prevailing party, to seek the recovery of attorneys' fees for this matter. Please allow this letter to amend our engagement letter of November 11, 2011 and confirm our understanding as to the distribution of those fees, should our motion for attorneys' fees be granted.

1. Both Orrick and Sam P Israel, P.C. have a lien in the proceeds of any judgment or settlement on the fee claim;

2. All sums paid by you to Sam P Israel, P.C., will be reimbursed to you first off the top of any fee recovery;

3. The next $200,000 of any fee recovery will be paid to Sam Israel P.C. to reimburse its attorneys' fees in this matter;

4. If there are sums remaining following the payments outlined above, the remainder is to be split between Sam P Israel P.C. and Orrick based on a ratio for the total sum to be remitted to each firm to be calculated as follows: numerator is total amount incurred by each firm and denominator is sum of the total amount incurred by both firms (as documented in the motion). Sam P Israel, P.C. will recover an amount pursuant to this formula up to and including the total amount of fees claimed by Sam P Israel, P.C. If there are fees remaining following that reimbursement, Orrick will receive 100% of the remainder to compensate it for its attorneys' fees in this matter.

5. This formula is conditioned upon you and both firms having the right to consent to and/or veto

to any proposed settlement. If there is a settlement over either firm's objection, then the formula does not apply.

6. In the event a dispute arises as to allocation of a fee recovery, no sums will be remitted to anyone other than you without consent of both firms or a court order dividing the proceeds.

As the likelihood of recovery of fees at the district court level is less than certain and because pursuing this matter to the appellate courts will result in additional expense and attorneys' fees, we retain the right to withdraw from this representation or decide not to take an appeal in this matter should the district court deny our motion. If we decline to appeal an adverse ruling on this motion and you wish other counsel to pursue an appeal of the fee motion, we will be happy to cooperate with that new counsel in providing necessary information, but it is agreed that the distribution of any fee recovery will follow the terms outlined above regardless of who takes the appeal of this matter.

All the terms of Orrick's original engagement letter, dated November 11, 2011 remain in full force and effect.

You may wish to consult with other counsel regarding the terms set forth in this letter. If this letter meets with your approval, and you understand its contents, please sign and return by email to me or Sam Israel.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/E. Joshua Rosenkranz
E. Joshua Rosenkranz
Partner

Dated: October 1, 2013

By:/s/Sam P. Israel
Sam P Israel

Dated: October 4, 2013

SUPAP KIRTSAENG

By: /s/Supap Kirtsaeng
Supap Kirtsaeng

Dated: October 4, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WILEY & SONS, INC.,

Plaintiff, **Case No. 1:08-cv-07834 (DCP)**

v. [FILED 12/11/13]

SUPAP KIRTSAENG,

Defendant.

DECLARATION OF KERRY M. MUSTICO IN SUPPORT OF PLAINTIFF'S SUR-REPLY IN OPPOSITION TO DEFENDANT'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Kerry M. Mustico, declare as follows:

1. I am an attorney at the law firm of Oppenheim + Zebrak, LLP, counsel of record for Plaintiff John Wiley & Sons, Inc. in the above-referenced case. I am a member in good standing of the bars of New York, Massachusetts, and the District of Columbia. I submit this declaration in support of Plaintiff's Sur-Reply in Opposition to Defendant's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

2. Attached hereto as Exhibit 1 is a true and correct copy of the October 1, 2013 Amendment to Defendant Kirtsaeng's billing arrangement with his counsel, Sam P Israel, P.C. and Orrick, Herrington & Sutcliffe LLP, originally submitted to the Court as Exhibit B to the Reply Declaration of E. Joshua Rosenkranz in Support of Defendant Supap Kirtsaeng's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Email from Sam Israel to Matthew Oppenheim dated Oct. 9, 2012, with all attachments.

4. Attached hereto as Exhibit 3 is a true and correct copy of the court's opinion in *American Institute of Physics, et al. v. Schwegman Lundberg & Woessner, P.A.*, Case No. 12-cv-528-RHK-JJK (D. Minn.) issued on Dec. 3, 2013.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Kerry M. Mustico
Kerry M. Mustico

Executed December 11, 2013
in Washington, D.C.

ORRICK, HERRINGTON &
SUTCLIFFE LLP
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NEW YORK, NEW YORK
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[FILED 12/11/13]

October 1, 2013

E. Joshua Rosenkranz
(212) 506-5380
jrosenkranz@orrick.com

Via E-Mail

Mr. Supap Kirtsaeng
c/o Mr. Sam P Israel, Esq.
Sam P Israel, P.C.
One Liberty Plaza, 23rd Floor
New York, NY 10006
smisrael@aol.com

Re: Representation of Supap Kirtsaeng in *John Wiley & Sons, Inc. v. Supap Kirtsaeng*

Dear Mr. Kirtsaeng:

I write on behalf of Orrick, Herrington & Sutcliffe LLP ("Orrick") and Sam P Israel, P.C. As you aware, following your success at the U.S. Supreme

Court, the Copyright Act permits you, as the prevailing party, to seek the recovery of attorneys' fees for this matter. Please allow this letter to amend our engagement letter of November 11, 2011 and confirm our understanding as to the distribution of those fees, should our motion for attorneys' fees be granted.

1. Both Orrick and Sam P Israel, P.C. have a lien in the proceeds of any judgment or settlement on the fee claim;

2. All sums paid by you to Sam P Israel, P.C., will be reimbursed to you first off the top of any fee recovery:

3. The next $200,000 of any fee recovery will be paid to Sam Israel P.C. to reimburse its attorneys' fees in this matter;

4. If there are sums remaining following the payments outlined above, the remainder is to be split between Sam P Israel P.C. and Orrick based on a ratio for the total sum to be remitted to each firm to be calculated as follows: numerator is total amount incurred by each firm and denominator is sum of the total amount incurred by both firms (as documented in the motion). Sam P Israel, P.C. will recover an amount pursuant to this formula up to and including the total amount of fees claimed by Sam P Israel, P.C. If there are fees remaining following that reimbursement, Orrick will receive 100% of the remainder to compensate it for its attorneys' fees in this matter.

5. This formula is conditioned upon you and both firms having the right to consent to and/or veto

to any proposed settlement. If there is a settlement over either firm's objection, then the formula does not apply.

6. In the event a dispute arises as to allocation of a fee recovery, no sums will be remitted to anyone other than you without consent of both firms or a court order dividing the proceeds.

As the likelihood of recovery of fees at the district court level is less than certain and because pursuing this matter to the appellate courts will result in additional expense and attorneys' fees, we retain the right to withdraw from this representation or decide not to take an appeal in this matter should the district court deny our motion. If we decline to appeal an adverse ruling on this motion and you wish other counsel to pursue an appeal of the fee motion, we will be happy to cooperate with that new counsel in providing necessary information, but it is agreed that the distribution of any fee recovery will follow the terms outlined above regardless of who takes the appeal of this matter.

All the terms of Orrick's original engagement letter, dated November 11, 2011 remain in full force and effect.

You may wish to consult with other counsel regarding the terms set forth in this letter. If this letter meets with your approval, and you understand its contents, please sign and return by e-mail to me or Sam Israel.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/Joshua Rosenkranz
E. Joshua Rosenkranz
Partner

Dated: October 1, 2013

SUPAP KIRTSAENG

By: /s/Supap Kirtsaeng
Supap Kirtsaeng

Dated: October 4, 2013

By: /s/Sam P. Israel
Sam P Israel

Dated: October 4, 2013

Wednesday, December 11, 2013
2:24:01 PM Eastern Standard Time

Subject: RE: *Wiley v Kirtsaeng* 08-7834

Date: Wednesday, October 9, 2013
4:41:54 PM Eastern Daylight Time

From: Sam Israel

To: Matt Oppenheim

Attached please find the defendant's production in accordance with the court's order re: fee motion discovery.

SAM P ISRAEL, P C.
1 LIBERTY PLAZA-TWENTY THIRD FLOOR
NEW YORK, NEW YORK 10006
TEL. 212-201-5345; FAX: 212-201-5343
CELL: 917-584-7262;
EMAIL: SMISRAEL@AOL.COM

NOTICE: The information contained in this transmission is intended for the use of the addressee. It is confidential and likely contains privileged attorney client communications or attorney work product. If you receive this communication and you are not the intended recipient, be advised that the copying or distribution of this communication is prohibited; please notify us immediately by telephone and return the original message to us at the above address.

-----Original Message-----

From: Matt Oppenheim
[mailto: Matt@oandzlaw.com]
Sent: Friday, September 27, 2013 12:58 PM
To: Rebecca_Demb@cit.uscourts.gov;
smisrael@aol.com
Subject: Re: *Wiley v Kirtsaeng* 08-7834

Thank you.

On 9/27/13 12:53 PM,
"Rebecca_Demb@cit.uscourts.gov"
<Rebecca_Demb@cit.uscourts.gov> wrote:

> It was brought to my attention that an error was made in the most recent docket entry regarding the last two dates in the scheduling order. In fact the last two dates should read 10/24 and 11/7. I am attempting to have the docket entry fixed. Sorry for any confusion.

SAM P. ISRAEL, P.C.
1 LIBERTY PLAZA
23RD FLOOR
NEW YORK, N. Y. 10006

TEL: (212) 201-5345
FAX: (212) 201-5343
E-MAIL: SMISRAEL@AOL.COM

SAM P. ISRAEL, ESQ.

October 2, 2008

By Email: kirtsaen@usc.edu
Supap Kirtsaeng
3637 Mentone Avenue,
Apt. 3
Los Angeles, Ca. 90034
(Tel: 310-558-9003)

Re: Retention in Connection with *Wiley v. Kirtsaeng*; SDNY 08-CV-7834

Dear Supap:

It was a pleasure talking with you earlier today to discuss the prospects of my firm acting as your counsel in the above-referenced matter. The following are my standard retention terms and that to which you will be agreeing in the event you decide to proceed with me as your counsel.

I record time in tenths of an hour and my hourly rate is $325. In connection with this engagement, I require an initial six thousand ($6,000) dollar retainer, as an advance on legal fees and expenses undertaken on behalf of you and the two entities mentioned above. The fund would be deposited in an attorney escrow account and at the conclusion of each month, amounts would be drawn to pay for my legal services and expenses, with a statement of the services rendered, the time expended and the balance remaining on deposit with my firm being provided to you at such time. (Other expenses include such items as long-distance telephone calls, filing agents, local counsel, photocopying, computerized legal research services, messengers and courier services, amounts paid to third party vendors, travel, and other charges.)

In the event that my services exceed this initial deposit you would continue to pay my ongoing fees and expenses until the completion of this matter or your decision to no longer retain my services. I will continue to bill you on a monthly basis. Payment of my monthly invoices is due upon receipt.

As my client, you would retain the right to replace me at any time. I also reserve the right to cease to represent you if I have serious differences with you regarding basic matters, or if an actual or potential conflict emerges which would prevent me from effectively or professionally advising you. Termination of my services would neither affect your obligation to pay the fees and costs incurred to the point of termination, nor your right to the return of any unused

amount on deposit with this firm. In executing this agreement, you agree to submit to the jurisdiction of the courts of New York State for the purposes of any dispute arising from unpaid fees.

You have my assurance that I will comply with the legal and ethical obligations imposed upon attorneys, including those that might arise in connection with the termination of services to a client.

If you wish to proceed with the engagement, please confirm your agreement with the terms of this letter by countersigning below and returning the fully executed original to my office by FedEx or other overnight courier, together with the retainer check. I appreciate your confidence in my abilities and look forward to the opportunity of serving you.

Sincerely.

Sam P Israel, P.C.

By:X: /s/Sam P. Israel
Sam P Israel

Accepted and Agreed:

By /s/ Supap Kirtsaeng
Supap Kirtsaeng

ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 WEST 52ND STREET
NEW YORK, NEW YORK
10019-6142

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fax +1-212-506-5151

WWW.ORRICK.COM

November 11, 2011

E. Joshua Rosenkranz
(212) 506-5380
jrosenkranz@orrick.com

Via E-Mail and U.S. Mail

Mr. Supap Kirtsaeng
c/o Mr. Sam P Israel, Esq.
Sam P Israel, P.C.
One Liberty Plaza, 23rd Floor
New York, New York 10006
smisrael@aol.com

Re: Representation of Supap Kirtsaeng in *John Wiley & Sons, Inc. v. Supap Kirtsaeng* (2d Cir., August 15, 2011)

Dear Mr. Kirtsaeng:

I understand from speaking with your lawyer, Sam P Israel that you are in favor of continuing your efforts to overturn the trial court's rulings in the case

brought against you by John Wiley & Sons, Inc. and that you approve of our firm working with Mr. Israel in this regard. (Specifically, we would collaborate on an effort to seek a reversal of the court's rulings through a petition for certiorari review made to the United States Supreme Court.) We understand from Mr. Israel that you are not in a position to pay for our services, yet we still need to confirm other non-monetary terms and conditions which will govern the attorney-client relationship.

The purpose of this engagement letter and the attached Standard Terms of Engagement is to confirm those terms and conditions upon which Orrick will be providing its legal services to you in the Matter. We believe that a mutual understanding of these terms and conditions at the outset is fundamental to establishing a good working relationship.

First, allow me to say that we are pleased to welcome you as a client of Orrick, Herrington & Sutcliffe LLP As we have discussed with Sam, we are dismayed by the Second Circuit's ruling in this case and are honored to have the opportunity to try to overturn it. The odds are against us, but we hope justice will prevail.

1. Legal Services

We have agreed to work on your petition for review to the United States Supreme Court and any Supreme Court proceedings that might arise from that petition. Specifically, we anticipate that this matter will involve the following: (1) drafting and fil-

ing a petition for certiorari at the United States Supreme Court; and (2) if the certiorari petition is granted, the preparation and filing of the merits brief before the Supreme Court and oral argument before the Supreme Court. The scope of our representation in this matter may evolve in accordance with our discussions with you and Mr. Israel; in the event of such changes, the terms of this letter will apply to these services, as well. Throughout, we look forward to working closely with Mr. Israel in all important submissions and decisions. As a condition of our handling the case for free, he and you both agree that if the Supreme Court does grant certiorari in this case, we will argue the case on your behalf.

This engagement would not encompass providing you with legal assistance with any matters other than the Second Circuit's denial of your appeal.

Also, we represent you, and not any other organization, relative, or entity that you may be affiliated with. Accordingly, we will be representing your interests, not the interests of any other. As indicated above, we will be co-counseling with Mr. Sam Israel.

2. Persons Responsible

Within our firm, I will be primarily responsible for this representation, with assistance from Annette L. Hurst and Alex J. Feerst. Our direct dial numbers are as follows:

E. Joshua Rosenkranz: (212) 506-5380

Annette L. Hurst: (415) 773-4585

Alex J. Feerst: (650) 614-7613

There may be occasions when your interests would best be served by involving other attorneys or paralegals within our firm, and we will advise you of such staffing assignments at the appropriate time.

Please let me know promptly if any questions arise about the services provided to you by our firm.

3. Fees and Charges

In accordance with our *pro bono* representation, we have agreed to provide our legal services to you without charge (subject to the condition noted above). We have agreed to pay all out-of-pocket expenses related to this representation.

4. Roles of Attorney and Client

Our responsibilities under this agreement are to provide legal counsel and assistance to you in accordance with this letter. As your legal counsel, all communications between us shall remain confidential unless you direct otherwise.

During the course of this engagement, we may express opinions or beliefs to you about the effectiveness of various courses of action or about the results that might be anticipated. Such statements are expressions of opinion only and should not be construed as promises or guarantees.

You have the right to terminate our representation at any time. We have the right to withdraw

from this engagement at any time with your consent, and at any time without your consent provided withdrawal can be accomplished without material adverse effect on your interests. In addition, we may withdraw without your consent if it becomes legally or ethically proper for us to do so under the applicable rules of professional responsibility.

You agree to cooperate fully with us, will promptly notify us of any changes in address, telephone number, income, or employment. You will maintain regular contact with us as is necessary for the conduct of this representation. You have been advised that you have the following rights regarding your representation by the firm: to be kept informed about important developments; to be consulted through co-counsel before any important decision is made on your behalf, and to be given enough information through co-counsel to make an informed decision; to be consulted through co-counsel and to agree to any settlement of your matter before it is settled on your behalf by any attorney at the firm; and to obtain a copy through co-counsel of the statement of client's rights and responsibilities.

When we close your file, all original documents that were furnished by you will be returned. We will maintain the file for no less than three years from the date of closing, after which it may be destroyed.

If this letter meets with your approval, and you understand its contents, please sign and return the enclosed copy. The effective date of our agreement to provide services to you is the date on which we first performed services.

We look forward to working with you.

Very truly yours,
/s/ E. Joshua Rosenkranz
E. Joshua Rosenkranz

Cc: Annette L. Hurst
Alex J. Feerst
Pro Bono Counsel
Sam P Israel

Attachment

STANDARD TERMS OF ENGAGEMENT

Except as modified in writing by the accompanying engagement letter or in another agreement signed by the Client and Orrick, the following provisions shall apply to the relationship between Orrick and the Client.

1. Client

Our engagement is only on behalf of the person(s) or entity(s) identified in the engagement letter accompanying these Standard Terms of Engagement. Our representation of the Client does not encompass any other person or entity affiliated with the Client.

2. Scope of Engagement

The scope of Orrick's representation of the Client is limited to the specific matters identified in the accompanying engagement letter, and such additional matters as the Client and Orrick may in their mutual discretion agree to from time to time. In each case, Orrick's agreement to any expansion of the scope of its representation of the Client will be subject, among other things, to such additional conflict checks, waivers, retainers, approvals and other arrangements as Orrick may in its professional judgment deem necessary or appropriate in the circumstances. Except as otherwise expressly provided in any written engagement letter (or a written amendment of a prior engagement letter) between Orrick and Client entered into in connection with such expansion of the scope of Orrick's representation, the

agreement reflected in these Standard Terms of Engagement, and in the accompanying engagement letter, applies to Orrick's current representation of the Client and to any subsequent matters that Orrick agrees to undertake on the Client's behalf.

3. Waiver of Future Conflicts of Interest

Our agreement to represent the Client is conditioned upon the understanding that we are free to represent any clients (including the Client's adversaries) and to take positions adverse to either the Client or an affiliate in any matters (whether involving the same substantive area(s) of law for which the Client have retained us or some other unrelated area(s), and whether involving business transactions, counseling, litigation or otherwise), which do not involve the same factual and legal issues as matters for which the Client has retained us or may hereafter retain us. In this connection, the Client should be aware that we provide services on a wide variety of legal subjects to a large number of clients both in the United States and internationally. (A summary of Orrick's current practice areas and the industries in which we represent clients can be found on Orrick's web site at www.orrick.com.) We will, of course, hold in confidence the Client's secrets and confidences. Similarly, the Client understands that while Orrick may obtain confidential information from other clients that may be of interest to the Client, Orrick cannot share such information with the Client. The Client agrees that it will not seek to disqualify Orrick from any such present or future representations, and

waives any actual or potential conflict that might arise from such current or future representations so long as those other representations do not involve the same factual and legal issues as a currently active engagement for the Client or the Orrick attorneys working on such engagements. The Client may wish to consult with other counsel about the consequences of this waiver.

4. Internal Communications

The occasion might arise for us, at our own expense, to consult regarding our engagement for the Client with our own counsel (e.g., our Chief Legal Officer, other firm lawyers working with our Chief Legal Officer who do not perform work for the Client on the Matter, or our own outside counsel). To the extent that we are addressing our own rights or responsibilities, a conflict of interest might be deemed to exist between Orrick and the Client as to such consultation or resulting communications, particularly if a dispute were ever to arise between Orrick and the Client regarding the Matter. A condition of this engagement is that the Client hereby consents to such consultation occurring, and waives any claim of conflict of interest based on such consultation or resulting communications that could otherwise disqualify us from continuing to represent the Client or from acting in our own behalf, even if such consultation or communications might be deemed adverse to the interests of the Client. The Client acknowledges and agrees that any such consulting and communications are protected by our own attorney-client privilege from disclosure to the Client.

5. **Responsibilities of Attorney and Client**

We will provide to the Client legal counsel and assistance in accordance with the accompanying engagement letter. The Client will not look to or rely upon Orrick for any investment, accounting, financial or other non-legal advice, including without limitation any advice regarding the character or credit of any person with whom the Client may be dealing. Although we will at times communicate with the Client by e-mail, letter, or other written form, we may provide much of our counsel and assistance in telephone conversations and meetings with the Client. If the Client ever wishes for us to confirm any oral advice in writing, please let us know.

For us to represent the Client effectively, we need the Client to provide us with complete and candid information regarding the subject matter of the matter, to keep us informed of relevant developments, to make decisions necessary for us to fulfill our responsibilities in the matter and otherwise to provide to us the Client's reasonable assistance and cooperation.

During the course of this engagement, we may express opinions or beliefs to the Client about the effectiveness of various courses of action or about the results that might be anticipated. Such statements are expressions of opinion only, and should not be construed as promises or guarantees.

We have a duty of confidentiality to the Client and each of our other clients. We take this duty very

seriously and, except to the extent permitted by the applicable rules of professional conduct, we will not disclose any confidential information of the Client to any other client or person. Similarly, we cannot disclose to the Client the confidences of any other client even when such information relates to matters that might affect the Client.

6. Termination

The Client may terminate this representation at any time, with or without cause, but in the case of litigation, court approval may be necessary. Subject to the application of the applicable rules of professional responsibility, Orrick also reserves the right to withdraw, if among other things, the Client fails to cooperate or follow Orrick's advice on a material matter, or any fact or circumstance arises that, in Orrick's view, renders our continuing representation unlawful or unethical, or we otherwise have the right to withdraw pursuant to applicable rules of professional responsibility. Any termination of our representation of the Client would be subject to such approval as may be required from any court(s) in which we are appearing on the Client's behalf.

7. Date of Termination

Orrick's representation of the Client will be considered terminated at the earliest of (i) the Client's termination of the representation, (ii) Orrick's withdrawal from the representation, or (iii) the substantial completion of Orrick's substantive work for the Client.

8. File Retention and Disposition

Once our engagement in this Matter ends, we will send you a written notice advising you that this engagement has concluded. You may thereafter direct us to return, retain or discard some or all of the documents pertaining to the engagement. Orrick may charge the Client for the reasonable costs of retrieval, assembly, copying, storage and transfer of all files or materials in any format. If Orrick determines it appropriate to dispose of materials relating to the Matter, Orrick will provide you written notice of that determination. If you do not respond to the notice within sixty (60) days, you agree and understand that any materials left with us after the engagement ends may be retained or destroyed at our discretion without further notice to you and in a manner which preserves the confidential and secret nature of their contents. If you have a Records Retention Policy in place with which outside counsel will need to comply, please advise us so that we may so inform our Records Department.

Notwithstanding the foregoing, and unless you instruct us otherwise, we will return and/or preserve any original documents provided to us by the Client, and any documents we know or believe you will need to retain to enforce your rights or to bring or defend claims. You should understand that "materials" include paper files as well as information in other mediums of storage including voicemail, email, printer files, copier files, facsimiles, dictation recordings, video files, and other formats. We reserve the right to make, at our expense, certain copies of all documents

generated or received by us in the course of our representation. When you request copies of documents from us, copies that we generate will be made at your expense. We will maintain the confidentiality of all documents throughout this process.

Our own files pertaining to the Matter will be retained by the firm (as opposed to being sent to you) or destroyed. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and account records. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us within a reasonable time after the termination of the engagement.

9. Arbitration

Although we think it is unlikely, a dispute could arise between us regarding some aspect of the engagement and Orrick's representation of the Client. Any such dispute, whether a claim by the Client against Orrick or by Orrick against the Client, including claims for unpaid fees and charges, negligence, quality of services, breach of contract or fiduciary duty, fraud or any other claims relating to any aspect of the engagement and our representation of the Client is referred to herein as a "Dispute" If we are not able to resolve a Dispute among ourselves, the Client and Orrick agree to resolve such dispute through confidential binding arbitration.

10. Binding Agreement

The engagement letter and these Standard Terms of Engagement represent the entire understanding and agreement between the Client and Orrick with respect to the subject matter referred to herein. By signing below, the Client acknowledges that the engagement letter and these Standard Terms of Engagement have been carefully reviewed and their content understood and that the Client agrees to be bound by all of the terms and conditions. Furthermore, the Client acknowledges that Orrick has made no representations or guarantees to the Client regarding the outcome of the Matter or the time necessary to complete the Matter. The provisions of this letter may only be amended in writing and signed by both parties.

11. Acceptance of Engagement Terms

By signing below, you acknowledge and represent that you have read the engagement letter and these Standard Terms of Engagement, that you understand and agree to the terms and provisions, and that you are authorized to do so on behalf of the Client.

ORRICK, HERRINGTON & SUTCLIFFE LLP	SUPAP KIRTSAENG
By: /s/ E. Joshua Rosenkranz E. Joshua Rosenkranz Partner	By: /s/ Supap Kirtsaeng
Dated: November 11, 2011	Dated: _____, 2011

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October 8, 2013

E. Joshua Rosenkranz
(212) 506-5380
jrosenkranz@orrick.com

VIA E-MAIL

Samuel P Israel
Samuel P Israel, P.C.
1 Liberty Plaza
Twenty Third Floor
New York, New York 10006

Re: *John Wiley & Sons, Inc. v. Supap Kirtsaeng*, No. 08-cv-7834

Dear Mr. Israel:

In response to the Court's request, made at the hearing held September 26, 2013, please receive this letter as confirmation that Orrick, Herrington & Sutcliffe LLP ("Orrick"), Supreme Court counsel for Supap Kirtsaeng, was retained to represent Mr. Kirtsaeng pro bono at the Supreme Court level, as set forth in our retainer agreement (which we understand is being produced).

As we understood that Mr. Kirtsaeng was unable to make any further payments for his legal representation, we did not provide him with any invoices. We did, however, keep detailed records of our work and time, as we fully intended to seek legal fees pursuant to the Copyright Act if we were to prevail at the Supreme Court level. We submitted full and complete time records of our work on this matter, detailing all hours spent by attorneys and paralegals and all disbursements, in connection with the July 31, 2013 Motion for Attorneys' Fees at Exhibits J and K to the Rosenkranz Declaration.

Orrick received no payments from Mr. Kirtsaeng or any other person or entity for its work on this matter.

Very truly yours,

/s/ E. Joshua Rosenkranz
E. Joshua Rosenkranz